

**OFFICIAL CODE  
OF  
GEORGIA  
—————  
ANNOTATED**



**VOLUME 5**

**Title 7. Banking and Finance**

**Title 8. Buildings and Housing**

**2004 Edition**



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# OFFICIAL CODE OF GEORGIA ANNOTATED

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With Provision for Subsequent Pocket Parts

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*Prepared by*  
The Code Revision Commission  
The Office of Legislative Counsel  
*and*  
The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia

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## **Volume 5**

### **2004 Edition**

Title 7. Banking and Finance  
Title 8. Buildings and Housing

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Including Acts of the 2004 Regular and Extraordinary Sessions of the  
General Assembly of Georgia and Annotations taken from the  
Georgia Reports and the Georgia Appeals Reports

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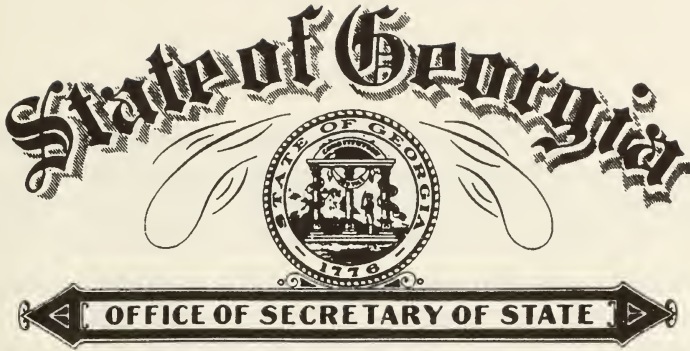
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*I, Cathy Cox, Secretary of State of the State of Georgia, do hereby certify that*      the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as same appear of file and record in this office. \_\_\_\_\_

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 15th day of July, in the year of our Lord Two Thousand and Four and of the Independence of the United States of America the Two Hundred and Twenty-eighth.



*Cathy Cox*

SECRETARY OF STATE





## Preface

This volume cumulates and replaces the 1997 edition of Volume 5 of the Official Code of Georgia Annotated, as supplemented by the 2003 Cumulative Supplement. The 1997 Volume 5 and its 2003 Supplement may be recycled or, if so desired, retained for historical purposes.

This volume contains all laws specifically codified in Titles 7 and 8 by the General Assembly through the 2004 Regular and Extraordinary Sessions. This volume also contains case annotations reflecting decisions posted to LexisNexis® through January 16, 2004. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LexisNexis® citations will be made.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; Mercer Law Review; Georgia State Bar Journal; and American Law Reports. Also included where appropriate are cross-references to the Official Code of Georgia Annotated.

This volume retains amendment notes and effective date notes for Acts passed during the 2002, 2003, and 2004 Regular and Extraordinary Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2002 Session of the General Assembly, the user should consult the Georgia Laws.

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## **User's Guide**

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.



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**Cross references.** — Commercial paper, Art. 3, T. 11. Bank deposits and collections, Art. 4, T. 11. Making of loans for educational purposes, § 20-3-230 et seq. Taxation of financial institutions, § 48-6-90 et seq. State depositories, § 50-17-50 et seq.

**Law reviews.** — For article discussing the consolidation of laws dealing with various types of financial organizations into the Financial Institutions Code of Georgia, see 11 Ga. St. B.J. 225 (1975). For survey article on business associations, see 42 Mercer L. Rev. 71 (1990). For annual survey article on business associations, see 45 Mercer L. Rev. 53 (1993). For annual survey article discussing commercial and banking law, see 49 Mercer L. Rev. 95 (1997). For survey article discussing developments in law of business

associations for the period from June 1, 1998 through May 31, 1999, see 51 Mercer L. Rev. 127 (1999). For survey article discussing developments in law of business associations for the period from June 1, 1999 through May 31, 2000, see 52 Mercer L. Rev. 95 (2000). For annual survey article discussing developments in commercial law, see 52 Mercer L. Rev. 143 (2000).

For note discussing and comparing the prudent man rule and the legal list rule in trustee investment, see 15 Mercer L. Rev. 530 (1964). For note discussing transfer fees in home loan assumptions in reference to the Georgia usury laws, see 9 Ga. L. Rev. 454 (1975). For note on 1995 amendments and enactments of sections in this chapter, see 12 Ga. St. U.L. Rev. 1 (1995).

## JUDICIAL DECISIONS

**Bank's exercise of power of sale not state action.** — Statutory authorization of right of creditor bank to contract with debtors for power of sale under deed to secure debt does not, when combined with state's general regulation of banking industry's loan making procedures, convert exercise of such

power of sale into state action; therefore, any contention that creditor's exercise of its power of sale under deed to secure debt violated debtors' rights to procedural due process under U.S. Const., Amend. 14 is without merit. *Ray v. Bank of Covington*, 247 Ga. 758, 279 S.E.2d 425 (1981).



**Cited** in *FDIC v. Willis*, 497 F. Supp. 272 (S.D. Ga. 1980).

OPINIONS OF THE ATTORNEY GENERAL

**Multiple office facilities.** — Bank may establish multiple bank office facilities using single mobile bank unit on regular part-time basis. 1976 Op. Att’y Gen. No. 76-106.

**National bank’s cancellation of debt in event of borrower’s death.** — A national

bank operating in Georgia may not enter into a debt cancellation contract providing that debt will be automatically cancelled in event of borrower’s death without complying with Georgia’s insurance laws. 1963-65 Op. Att’y Gen. p. 457.

RESEARCH REFERENCES

**ALR.** — Finance company’s liability in connection with consumer fraud practices of party selling goods or services, 18 ALR4th 824.

Exclusion from debtor status of banks and the like by § 109(b)(2) of Bankruptcy Code (11 USCS § 109(b)(2)), 87 ALR Fed. 282.

Construction and application of preemption exemption, under Employee Retirement Income Security Act (29 USCS §§ 1001 et seq.), for state laws regulating insurance, banking, or securities (29 USCS § 1144(b)(2)), 87 ALR Fed. 797.

ARTICLE 1

PROVISIONS APPLICABLE TO DEPARTMENT OF BANKING AND  
FINANCE AND FINANCIAL INSTITUTIONS GENERALLY

**Law reviews.** — For survey article on commercial law, see 34 Mercer L. Rev. 31 (1982).

RESEARCH REFERENCES

**ALR.** — Failure of moneylender or creditor engaged in business of making loans to procure license or permit as affecting valid-

ity or enforceability of contract, 29 ALR4th 884.

PART 1

PURPOSES AND PRELIMINARY MATTERS

**Law reviews.** — For note discussing the interrelationship between the International Banking Act, the provisions of the Financial Institutions Code relating to domestic banking, and the Foreign Corporations Chapter

of the Corporation Code in the regulation of international banking in Georgia and comparing Georgia provisions with those of New York and California, see 27 Mercer L. Rev. 827 (1976).

7-1-1. Short title.

This chapter shall be known and may be cited as the “Financial Institutions Code of Georgia” (hereinafter called “this chapter”). (Code 1933, § 41A-101, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-2. Legislative findings.**

The General Assembly finds and declares that the sound, efficient, and responsive operation of financial institutions is essential to the livelihood of the people of this state and to the stability and growth of the economy of this state and region and vitally affects the public interest. (Code 1933, § 41A-103, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-3. Objectives of chapter; standards for construction and regulation.**

(a) The underlying objectives of this chapter are to provide for:

- (1) Safe and sound operation of financial institutions;
- (2) Proper conservation of the assets of financial institutions;
- (3) Public confidence in financial institutions;
- (4) Protection for the interests of the depositors, creditors, and shareholders of financial institutions;
- (5) Service by financial institutions responsive to the needs and convenience of depositors, borrowers, and other customers and conducive to economic progress and, to these ends, opportunities to expand services and facilities;
- (6) Appropriate competition among financial institutions and between them and other financial organizations including those organized under the laws of the United States, other states, and foreign countries;
- (7) Delegation to the department of rule-making power and administrative discretion in order that supervision of financial institutions may be flexible and responsive to changes in economic conditions and banking, fiduciary, and other commercial practices;
- (8) Opportunity for management of financial institutions to exercise their business judgment;
- (9) Simplification and modernization of the law governing banking, trust, and other financial institutions; and
- (10) As to other entities under the supervision of the department that are not financial institutions, including check cashers and mortgage lenders and brokers, to provide for:
  - (A) Supervision and examination of their business affairs to ensure that they operate in a manner consistent with state law;
  - (B) Protection of the interests of consumers and service by these entities which is responsive to their consumers; and
  - (C) Simplification and modernization of the law that governs these entities, together with the delegation of rulemaking power and admin-



istrative discretion to the department to carry out its responsibilities, keeping in mind the need for economic and technological progress in the industry.

(b) This chapter shall be construed and applied to promote the foregoing objectives and they shall constitute standards to be observed by the department in promulgating rules and regulations, issuing cease and desist orders, conducting examinations, and exercising discretionary powers and in connection with all other matters embraced by this chapter. (Code 1933, § 41A-104, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1997, p. 485, § 1; Ga. L. 2002, p. 1220, § 1.)

**The 2002 amendment**, effective July 1, 2002, in subsection (a), deleted “and” at the end of paragraph (a)(8), substituted “; and”

for a period at the end of paragraph (a)(9), and added paragraph (a)(10).

### JUDICIAL DECISIONS

**Approval of proposed exercises of incidental powers guided by paragraph (a)(6).** — O.C.G.A. § 7-1-261 establishes legislative intent that state banks be authorized to exercise “incidental powers” and delegates authority to approve such powers to commissioner, who shall be guided in this determination by statutory objection stated

in O.C.G.A. § 7-1-3(a)(6) of making state banks competitive with national banks. Department of Banking & Fin. v. Independent Ins. Agents of Ga., Inc., 158 Ga. App. 556, 281 S.E.2d 265 (1981), rev'd on other grounds, 248 Ga. 787, 285 S.E.2d 535 (1982) (decided prior to 1983 amendment of § 7-1-261).

### 7-1-4. Definitions.

Subject to additional definitions contained in the subsequent provisions of this chapter, as used in this chapter, the term:

(1) “Affiliate” means any corporation, business trust, association, or other similar organization:

(A) Of which a financial institution, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions;

(B) Of which control is held, directly or indirectly, through stock ownership or in any other manner by the shareholders of a financial institution who own or control either a majority of the shares of such financial institution or more than 50 percent of the number of shares voted for the election of directors of such financial institution at the preceding election or by trustees for the benefit of the shareholders of any such financial institutions;

(C) Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of any one financial institution; or

(D) Which owns or controls, directly or indirectly, either a majority of the shares of a financial institution or more than 50 percent of the number of shares of a financial institution voted for the election of directors of a financial institution at the preceding election or controls in any manner the election of a majority of the directors of a financial institution or for the benefit of whose shareholders or members all or substantially all the capital stock of a financial institution is held by trustees.

(1.5) “Agency relationship” is a relationship created by a contractual agreement whereby a financial institution agrees with a third party, including another financial institution, to act in a principal or agent capacity to facilitate the conduct of activities related to the business of banking, which activities are currently authorized under this chapter or under other applicable law.

(2) “Agreement for the payment of money” means a consensual monetary obligation not in the form of an evidence of indebtedness or an investment security and includes an account or general intangible as defined in Code Section 11-9-102.

(3) “Appropriated retained earnings” means that portion of the retained earnings of a bank or trust company set aside by resolution of the board of directors as unavailable for the payment of dividends or other distribution to shareholders.

(4) “Articles” means original or restated articles of incorporation or articles of consolidation and all the amendments thereto, including articles of merger or conversion, and also includes what heretofore have been designated by law as certificates of incorporation or charters and, in case of foreign corporations, whatever documents are equivalent to “articles” in their jurisdiction of incorporation. After an amendment restating articles in their entirety, the “articles” shall not include any prior documents, and the certificate of amendment issued by the Secretary of State shall so state.

(5) “Assets” means all the property and rights of every kind of a financial institution.

(6) “Attorney” means an attorney at law who is regularly retained as counsel for a financial institution or who is a partner or associate of a firm which is regularly retained as counsel for a financial institution.

(7) “Bank” means a corporation existing under the laws of this state on April 1, 1975, or organized under this chapter and authorized to engage in the business of receiving deposits withdrawable on demand or

deposits withdrawable after stated notice or lapse of time; “bank” shall also include national banks located in this state for the purpose of Part 6 of Article 2 of this chapter, relating to deposits, safe-deposit agreements, and money received for transmission, and Article 8 of this chapter, relating to multiple deposit accounts; provided, however, that “bank” shall not include a credit union, a building and loan association, a savings and loan association, or a licensee under Article 4 of this chapter. “Bank” shall include a federal or state credit union for the purposes of Part 6 of Article 2 of this chapter, provided that this inclusion is not intended to grant or expand any powers to credit unions not authorized in Part 6 of Article 2 of this chapter or by other law.

(8) “Building and loan association” means such an association as defined in paragraph (1) of subsection (a) and subsections (b) and (c) of Code Section 7-1-770.

(9) “Capital debt” means the sum of the face value of the subordinated securities of a financial institution issued pursuant to Code Section 7-1-419.

(10) “Capital stock” means the sum of the par value of the authorized shares which have been issued and remain outstanding of a bank or trust company.

(11) Reserved.

(12) “Commercial bank” means a bank authorized to hold deposits subject to check.

(13) “Commissioner” means the commissioner of banking and finance.

(14) “Corporation” means a corporation, whether profit or nonprofit, and includes a professional corporation or joint-stock association, organized under the laws of this state, the United States, or any other state, territory, or dependency of the United States or under the laws of a foreign country.

(15) “Credit union” means a cooperative society incorporated under the laws of this state on April 1, 1975, or organized under Article 3 of this chapter and existing for the twofold purpose of promoting thrift among its members and creating a source of credit for them at reasonable rates.

(16) “Department” means the Department of Banking and Finance.

(17) “Depositor” means any person or corporation who shall deposit money or items for the payment of money in any financial institution, which funds are subsequently (allowing time for collections) withdrawable either on demand or after a stated notice or lapse of time, whether interest is allowed thereon or not, and shall also include:

(A) Holders of demand and time certificates of deposit;

(B) Owners of certified or cashiers' checks and checks purchased from a licensee under Article 4 of this chapter; and

(C) Shareholders in credit unions, federal credit unions, building and loan associations, and savings and loan associations to the extent that funds paid in by them are withdrawable within the terms of this definition.

(18) "Evidence of indebtedness" means a note, draft, or similar negotiable or nonnegotiable instrument.

(19) "Federal credit union" means an association organized pursuant to the Federal Credit Union Act, 12 U.S.C. Sections 1750-1795i.

(20) "Fiduciary" means an executor, administrator, guardian, receiver, trustee, assignee for benefit of creditors, or one acting in a similar capacity.

(21) "Financial institution" means:

(A) A bank;

(B) A trust company;

(C) A building and loan association;

(D) A credit union;

(E) A corporation licensed to engage in the business of selling checks in this state on April 1, 1975, or so licensed pursuant to Article 4 of this chapter;

(F) Business development corporations existing on April 1, 1975, pursuant to the former "Georgia Business Development Corporation Act of 1972," approved April 3, 1972 (Ga. L. 1972, p. 798), or organized pursuant to Article 6 of this chapter;

(G) An international bank agency doing business in this state on April 1, 1975, pursuant to the former "International Bank Agency Act," approved April 6, 1972 (Ga. L. 1972, p. 1140), or authorized to do business in this state pursuant to Article 5 of this chapter;

(H) In addition, as the context requires, a national bank, savings and loan association, or federal credit union for the purpose of the following provisions:

(i) Code Section 7-1-2, relating to findings of the General Assembly;

(ii) Code Section 7-1-3, relating to objectives of this chapter;

(iii) Code Section 7-1-8, relating to supplementary principles of law;



(iv) Code Section 7-1-37, relating to restrictions on officials and personnel;

(v) Code Section 7-1-70, relating to disclosure of information;

(vi) Code Section 7-1-90, relating to judicial review of department action;

(vii) Subsection (d) of Code Section 7-1-91, relating to orders to desist from conduct illegal under the laws and regulations of this state;

(viii) Code Section 7-1-94, relating to the evidentiary results of examinations and investigations;

(ix) Code Sections 7-1-111 and 7-1-112, relating to emergency closings;

(x) Code Sections 7-1-110 and 7-1-294, relating to permissive closings;

(xi) Code Section 7-1-133, relating to prohibited advertising;

(xii) Paragraph (11) of Code Section 7-1-261, relating to additional operational powers of banks and trust companies;

(xiii) Paragraph (3) of subsection (a) of Code Section 7-1-394, relating to criteria to be considered in approving new banks;

(xiv) Code Section 7-1-658, relating to loans;

(xv) Code Section 7-1-840, relating to criminal prosecutions; and

(xvi) Code Section 7-1-841, relating to application of Title 16 provisions;

(I) For the purposes of Code Section 7-1-61, “financial institution” shall also include a bank holding company as defined in Code Section 7-1-605;

(J) For the purposes of paragraph (10) of Code Section 7-1-261, relating to agency relationships, “financial institution” shall include banks chartered by states other than Georgia; and

(K) For the purposes of Part 6 of Article 2 of this chapter, relating to deposits, safe deposit agreements, and money received for transmission, and Article 8 of this chapter, relating to multiple party deposit accounts, “financial institution” shall also include federal credit unions.

(22) “Insolvency” means:

(A) Inability to meet liabilities as they become due in the regular course of business; or

(B) Insufficiency in actual cash market value of assets to pay liabilities to depositors and other creditors.

(22.5) “Main office” means the principal banking location of a bank as such location appears in the records of the Department of Banking and Finance. If a bank does not designate a main office, the department shall choose a banking location of the bank to be the main office.

(23) “National bank” means a national banking association organized pursuant to 12 U.S.C. Section 21-215b.

(24) “Net assets” means the amount by which the total assets exceed the total debts of a financial institution. Total assets shall include but not be limited to both tangible and intangible assets (except good will), including prepaid expenses, prepaid taxes, and accrued income using book values determined in accordance with generally accepted accounting principles applicable to financial institutions. Total debts shall include all liabilities, other than contingent liabilities, including accrued expenses, deferred or unearned income, and valuation reserves, all determined in accordance with generally accepted accounting principles applicable to financial institutions.

(25) “Paid-in capital” means the sum of the considerations received in the sale or exchange of shares of a bank or trust company in excess of the amount of the capital stock and the expense fund required by Code Section 7-1-396 and includes the surplus, if any, created by or arising out of a reduction of the capital stock of such financial institution effected in a manner permitted by law, any amounts properly regarded as surplus of such financial institution on April 1, 1975, and any amounts transferred from the expense fund as permitted by Code Section 7-1-412.

(26) “Person” means an individual, trust, general or limited partnership, unincorporated association (except a joint-stock association), or any other form of unincorporated enterprise.

(27) “Principal court” means the superior court of the county where the registered office of a financial institution is located or, in the case of a proposed financial institution, will initially be located, as shown in its articles or application for authority to commence business. Whenever under this chapter the principal court is authorized to take any action but lacks, because of constitutional restrictions, jurisdiction or venue over the person or corporation against which such action is to be taken or over the subject matter which is to be affected by its action, then such action may be taken by the superior court of this state in which jurisdiction and venue are proper or, in the absence of any such court, by a court of another state, a federal court, or a court of a foreign country in which jurisdiction and venue are proper.

(28) “Public body” means an agency, authority, board, commission, instrumentality, or similar entity which is part of or connected with the government or political subdivision referred to in the context.



(29) “Public sale” means a sale as defined in paragraph (31.1) of Code Section 11-1-201.

(29.5) “Registered agent” means the person or corporation on whom service of process is to be made in a proceeding against a bank. Written notice of any change in the identity or address of a bank’s registered agent must be delivered to the Department of Banking and Finance in addition to and at the same time as such notice is filed with the Secretary of State. The provisions of Part 1 of Article 5 of Chapter 2 of Title 14 shall apply to any such registered agent.

(30) “Registered office” means the location of the registered agent and may be a banking location.

(30.5) “Retained earnings” means the balance of the net profits, income, gains, and losses from the date of incorporation or from the latest date when a deficit was last eliminated of a financial institution whose articles were granted by the Secretary of State and excludes subsequent distributions to shareholders and transfers to appropriated retained earnings. Retained earnings shall also include any portion of paid-in capital or appropriated retained earnings or, in the case of other organizations, equivalent funds, allocated to retained earnings in mergers, consolidations, or acquisitions of all or substantially all of the property or assets of another such financial institution or other organization permitted by law.

(31) “Savings and loan association” means an association created pursuant to the Home Owners’ Loan Act of 1933, 12 U.S.C. Sections 1461-1468, including a federal savings bank.

(32) “Savings bank” or “state savings and loan association” means a bank which pays interest on substantially all of its depositors’ funds and the majority of whose loans are secured by first liens on or other security interest in residential real property or upon the security of its deposits.

(33) “Shareholder” means the owner of shares in a financial institution.

(34) “Shares” means the units into which the proprietary interest of the institution is divided.

(35) “Statutory capital base” means:

(A) The sum of the capital stock, the paid-in capital, the appropriated retained earnings, and the capital debt of a bank or trust company; or

(B) The amount of the net assets of such financial institution, whichever is the lower amount.

(36) “Subject to check” includes withdrawal or transfer by negotiable or transferable order or authorization even though such order or authorization does not constitute a check under Code Section 11-3-104.

(37) “Subsidiary” means a corporation controlled by a financial institution which owns at least a majority of its voting shares.

(38) “Third-party payment service” means any system employing checks, drafts, computer transmissions, or other techniques by which a depositor may effect payment to third parties.

(39) “Treasury shares” means shares of a financial institution which have been issued, have been subsequently acquired by, and belong to the financial institution otherwise than in a fiduciary capacity and have not been canceled. Such shares shall be deemed to be “issued” but not “outstanding” shares.

(40) “Trust company” means a corporation existing under the laws of this state on April 1, 1975, or organized under this chapter and authorized by law to engage in the business of acting as a fiduciary. (Code 1933, § 41A-102, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 1; Ga. L. 1977, p. 730, § 1; Ga. L. 1980, p. 972, § 1; Ga. L. 1981, p. 1566, § 1; Ga. L. 1982, p. 3, § 7; Ga. L. 1982, p. 2496, §§ 1, 2; Ga. L. 1983, p. 493, § 2; Ga. L. 1984, p. 949, § 1; Ga. L. 1985, p. 258, § 1; Ga. L. 1986, p. 458, § 1; Ga. L. 1991, p. 94, § 7; Ga. L. 1995, p. 673, §§ 1, 2; Ga. L. 1996, p. 6, § 7; Ga. L. 1998, p. 795, §§ 1, 2; Ga. L. 2000, p. 174, § 1; Ga. L. 2001, p. 362, § 24; Ga. L. 2001, p. 970, § 1.)

**Editor’s notes.** — The Georgia Business Development Corporation Act of 1972, referred to in subparagraph (21)(F) of this section, was enacted by Ga. L. 1972, p. 798, and repealed by Ga. L. 1974, p. 705, § 3(k). The International Bank Agency Act, referred to in subparagraph (21)(G) of this section, was enacted by Ga. L. 1972, p. 1140, and repealed by Ga. L. 1974, p. 705, § 3(j).

Ga. L. 1983, p. 493, § 1, not codified by the General Assembly, provided as follows: “It is the intent of this Act to implement certain changes required by Article III, Sec-

tion VI, Paragraph V(a) of the Constitution of the State of Georgia.”

**Administrative rules and regulations.** — Agency relationship of financial institutions, Official Compilation of Rules and Regulations of State of Georgia, Department of Banking and Finance, Banks, Chapter 80-1-2.

**Law reviews.** — For survey article on commercial law, see 34 Mercer L. Rev. 31 (1982). For article, “Business Associations,” see 53 Mercer L. Rev. 109 (2001).

## JUDICIAL DECISIONS

**Editor’s notes.** — In light of the similarity of the issues dealt with by the provisions, decisions under former Ga. L. 1919, p. 135 are included in the annotations for this Code section.

**Issuance of passbook.** — A deposit is or is not, according to agreement, subject to check on bank with which it was actually placed, and may or may not bear interest, and may be or may not be payable on demand. Issuance of a passbook is not con-

clusive evidence, but is material on question whether transaction is simply that of borrower and lender in ordinary sense or that of a deposit. *Citizens Bank v. Mobley*, 166 Ga. 543, 144 S.E. 119 (1928).

**Execution and delivery of certificates of deposit.** — In suit by depositor against bank, upon certificates of deposit issued by bank to depositor or depositor’s agent, depositor made prima facie case of liability by proof of execution and delivery of certificates as al-

leged. *Bank of Emanuel v. Hall*, 33 Ga. App. 358, 126 S.E. 728, cert. denied, 33 Ga. App. 828 (1925).

### OPINIONS OF THE ATTORNEY GENERAL

**“Receiving deposits”.** — Arrangement by which business corporation would receive money from individuals and in return issue to the individuals its debt securities redeemable by negotiable checks, would involve “receiving deposits” within meaning of

O.C.G.A. § 7-1-4(7), and only persons or entities authorized to engage in banking business by O.C.G.A. § 7-1-241 may lawfully engage in such arrangements. 1982 Op. Att’y Gen. No. 82-68.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 1, 13, 15, 145, 170 et seq., 310, 719 et seq., Corporations, §§ 1-4, 28 to 41, 55. 11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1028 et seq., 1048, 1050, 1060 et seq. 18A Am. Jur. 2d, Corporations, §§ 199, 276, 431, 445, 728. 18B Am. Jur. 2d, Corporations, § 1197. 19 Am. Jur. 2d, Corporations, §§ 2150-2152.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 2, 3, 172, 269-271, 276, 499, 599, 625. 12 C.J.S., Building and Loan Associations, § 2. 18 C.J.S., Corporations, §§ 1-18. 19 C.J.S., Corporations, § 624-627.

**ALR.** — What is a bank or banking corporation within exemption provision of Bankruptcy Act, 97 ALR 1087.

What are “financial corporations” or “moneysed institutions” within state tax laws, 145 ALR 354.

Maintenance of computer terminal in retail store for purpose of effecting transfer of funds between financial institution and its depositors as conduct of banking business by store, 73 ALR3d 1282.

### 7-1-5. Unauthorized activity as a financial institution.

Whenever it shall appear to the department that any person or corporation is conducting business as a financial institution without authority pursuant to this chapter, the department may determine, for purposes of Parts 4, 7, 8, and 9 of this article, that such person or corporation is a financial institution as defined in paragraph (21) of Code Section 7-1-4. (Code 1933, § 41A-410, enacted by Ga. L. 1978, p. 1717, § 1.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 2.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 19, 20, 748.

### 7-1-6. Notices; waivers of notice.

Except as otherwise expressly provided:

(1) Any notice required to be given under this chapter may be delivered in person by first-class mail, or by telegram, charges prepaid, to the last known address of the person or corporation or to the registered office of the corporation. If the notice is sent by mail or by telegraph, it shall be deemed to have been given when deposited in the United States



mail or with a telegraph office. If such notice is of a meeting, it shall specify the place, day, and hour of the meeting. Notice of a meeting of shareholders shall be given not less than ten nor more than 50 days before the meeting. Notice of a special meeting shall specify the general nature of the business to be transacted.

(2) Any written notice required to be given under this chapter need not be given if there is a waiver thereof in writing signed by the person or on behalf of the corporation entitled to such notice or by their proxy, whether before or after the time when the notice would otherwise be required to be given, provided that no such waiver shall apply by its terms to more than one required notice.

(3) Attendance of a person, either in person or by proxy, at any meeting shall constitute a waiver of notice of such meeting, except where a person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened.

(4) If the language of a proposed resolution or a proposed plan requiring approval by shareholders is included in a written notice of a meeting of shareholders, the shareholders' meeting considering the resolution or plan may adopt it with such clarifying or other amendments as do not enlarge its original purpose without further notice to shareholders not present in person or by proxy. (Code 1933, § 41A-107, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18A Am. Jur. 2d, Corporations, §§ 977-985. 18B Am. Jur. 2d, Corporations, § 1370.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 49, 50, 168.

#### 7-1-7. Publication of notices or advertisements.

(a) Except as otherwise expressly provided, any notice or advertisement required by this chapter to be published in a newspaper shall be published once a week for four weeks in the newspaper which is, on the date of the first such publication, the official organ (as determined pursuant to Code Section 9-13-142) of the county which is or is to be the location of the main office of the financial institution.

(b) The department may waive or modify any requirement to publish a notice:

(1) In order to facilitate a merger, consolidation, or sale of assets when one of the parties is a failed or failing bank as determined by the commissioner;

(2) Whenever it determines that the public benefit is not significantly served by a second or subsequent publication in a situation where a series of transactions would otherwise require multiple publications;

(3) Where a similar publication required by another state or federal regulator serves substantially the same purpose;

(4) By regulation or order, whenever it determines that a lesser number of publications will reduce administrative burden and will adequately serve the public benefit of the notice; or

(5) For other reasons of regulatory parity.

(c) The department may require proof of publication or modified publication having been completed prior to consummation of the underlying transaction. (Code 1933, § 41A-108, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1980, p. 972, § 2; Ga. L. 1987, p. 1586, § 1; Ga. L. 1995, p. 673, § 3; Ga. L. 1998, p. 795, § 3; Ga. L. 2000, p. 136, § 7; Ga. L. 2000, p. 174, § 2.)

**Code Commission notes.** — The amendment (enactment) of this Code section by Ga. L. 2000, p. 136, § 7, irreconcilably conflicted with and was treated as superseded by Ga. L. 2000, p. 174, § 2. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

**Administrative rules and regulations.** — Notification of filing and protest, Official Compilation of Rules and Regulations of State of Georgia, Department of Banking and Finance, Banks, Rule 80-1-1-.04.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 18A Am. Jur. 2d, Corporations, §§ 977-979. 18B Am. Jur. 2d, Corporations, § 1460.

**C.J.S.** — 19 C.J.S., Corporations, § 721-735.

### 7-1-8. Applicability of common law.

Unless expressly or impliedly displaced by this chapter, general principles of common law shall apply to financial institutions. (Code 1933, § 41A-109, enacted by Ga. L. 1974, p. 705, § 1.)

### 7-1-9. Reservation of power over financial institutions.

The General Assembly shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon financial institutions that are subject to this chapter. The General Assembly shall have the power to amend, repeal, or modify this chapter at pleasure. (Code 1933, § 41A-110, enacted by Ga. L. 1974, p. 705, § 1.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 21.      **C.J.S.** — 9 C.J.S., Banks and Banking, § 7.

**7-1-10. Rules of construction.**

(a) The rules of statutory construction contained in Chapter 3 of Title 1 shall apply to this chapter.

(b) Unless otherwise specifically indicated and to the full extent permitted by the Constitution of Georgia, any reference in this chapter to an existing statute or regulation shall mean to such statute or regulation as has been or may in the future be amended or have material added to it. If in any case such construction is not constitutionally permissible, such reference shall mean to the statute or regulation as it existed on April 1, 1975.

(c) Any reference in this chapter to an action by a superior court or other court shall authorize a judge of such court to take such action in term or in vacation, whether present in the county or absent from it. (Code 1933, § 41A-105, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-11. Registration of nonresident corporations.**

Whenever any financial institution or other corporation domiciled outside this state, including domestic international banking facilities, international bank agencies, international bank representative offices, and representative offices of federally and state chartered financial institutions, is required to register with the department as a prerequisite to the conduct of business in this state or for the purpose of taking title or liens against property located in this state, such registration shall be in lieu of further registration pursuant to Code Section 16-14-15 or any other provisions of law. (Code 1981, § 7-1-11, enacted by Ga. L. 1987, p. 1586, § 2.)

## PART 2

## ORGANIZATION AND PERSONNEL OF DEPARTMENT OF BANKING AND FINANCE

**7-1-30. Department created.**

There is created the Department of Banking and Finance. (Ga. L. 1919, p. 135, art. 2, § 1; Code 1933, § 13-301; Ga. L. 1972, p. 1015, § 1101; Ga. L. 1972, p. 1198, § 2.)

**7-1-31. Position and term of commissioner.**

(a) The head of the department shall be the commissioner who shall exercise supervision and control over all divisions and employees of the department.



(b) The commissioner shall be appointed by the Governor, by and with the advice and consent of the Senate, for a four-year term. The initial term of the commissioner shall terminate on January 20, 1976. Each succeeding term of office shall be for four years commencing on the expiration date of the previous term. Beginning July 1, 1999, the salary of the commissioner shall be set by the Governor. (Ga. L. 1919, p. 135, art. 2, § 2; Code 1933, § 13-302; Ga. L. 1972, p. 1015, §§ 1101, 1102; Ga. L. 1972, p. 1198, §§ 2, 3; Code 1933, § 41A-201, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1999, p. 910, § 1; Ga. L. 1999, p. 1213, § 1.)

**Editor's notes.** — The amendment of this Code section by Ga. L. 1999, p. 910, § 1, was superseded by the amendment by Ga. L. 1999, p. 1213, § 1.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 103.      **C.J.S.** — 9 C.J.S., Banks and Banking, § 139.

#### 7-1-32. Qualifications of commissioner.

The commissioner shall be of good moral character, shall not have been convicted in any court of competent jurisdiction of any crime involving moral turpitude, shall have been a citizen of this state for not less than three years, and shall have attained the age of 30 years but be less than 70 years. In addition, the commissioner shall have had at least five years' experience as an active officer of a bank or national bank or as an examiner or other officer in a federal or state agency supervising such institutions. (Ga. L. 1919, p. 135, art. 2, § 4; Code 1933, § 13-304; Code 1933, § 40-3597, enacted by Ga. L. 1972, p. 1015, § 1102; Ga. L. 1972, p. 1198, § 3; Code 1933, § 41A-202, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 103.      **C.J.S.** — 9 C.J.S., Banks and Banking, § 139.

#### 7-1-33. Removal or suspension of commissioner.

The commissioner may be suspended or removed by the Governor whenever the Governor has in his judgment trustworthy information that the commissioner is insane or has absconded or grossly neglected his duties or is guilty of conduct plainly violative of his duties or the restrictions of Code Section 7-1-37. (Ga. L. 1919, p. 135, art. 2, § 7; Code 1933, § 13-307; Code 1933, § 41A-203, enacted by Ga. L. 1974, p. 705, § 1.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 2 Am. Jur. 2d, Administrative Law, § 45, 47-49.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 139.

**7-1-34. Vacancy in office of commissioner.**

In the event there shall be a vacancy in the office caused by death, resignation, disability, disqualification, suspension, or removal of the commissioner, the senior deputy commissioner of banking and finance previously designated by the commissioner as provided in Code Section 7-1-35 shall exercise the powers and perform the duties of the commissioner until a successor is appointed and qualified to serve for the unexpired term of the commissioner. (Ga. L. 1919, p. 135, art. 2, § 3; Code 1933, § 13-303; Code 1933, § 41A-204, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1211, § 1; Ga. L. 1997, p. 485, § 2.)

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**Lack of deputy commissioner at time vacancy occurs.** — In event of vacancy in office of superintendent of banks (now commissioner of banking and finance), the assistant superintendent (now deputy commission-

er), shall act, or if there be none, the Governor shall appoint a superintendent who shall in turn appoint an assistant. 1948-49 Op. Att'y Gen. p. 16.

**7-1-35. Deputy commissioner, examiners, and assistants; recruitment, training, and certification of professional staff.**

(a) The commissioner shall appoint from time to time, with the right to discharge at will, a senior deputy commissioner of banking and finance. The commissioner may appoint additional deputy commissioners as needed. All deputy commissioners shall also be ex officio examiners. The commissioner may appoint such additional examiners and assistants as he or she may need to discharge in a proper manner the duties imposed upon the commissioner by law, subject to any applicable rules and regulations of the state merit system and within the limitations of the appropriation to the department as prescribed in this chapter. Each deputy commissioner and not more than ten additional persons designated by the commissioner shall be in the unclassified service. Further, all persons in the positions of assistant deputy commissioner, supervisory examiner, and senior financial examiner shall be in the unclassified service. All persons in the positions of district director, assistant deputy commissioner, supervisory examiner, and senior financial examiner shall have had at least five years of experience as an examiner in a federal or state agency supervising financial institutions. All other personnel of the department including assistant financial examiners and financial examiners shall be governed by such rules of position, classification, appointment, promotion, demotion, transfer, dismissal, qualification, compensation, seniority privileges, tenure, and other employment

standards of the state merit system. As used in this Code section, the term “state merit system” shall mean that system established pursuant to Article 1 of Chapter 20 of Title 45.

(b) Within the limitations of its annual appropriation, the department may expend funds pursuant to the authority granted under Article VIII, Section VII, Paragraph I of the 1983 Constitution of Georgia necessary to the recruitment, training, and certification of a professional staff of financial examiners. The department may provide for the participation of examiners in such educational, training, and certification programs as the commissioner deems necessary to the continued qualification and recognition of the professional status of examiners. The department may recognize independent certification of professional qualifications as supplemental to the rules and regulations of the state merit system in considering the personnel actions relative to its examiners. (Ga. L. 1919, p. 135, art. 2, §§ 10, 12; Ga. L. 1920, p. 102, § 1; Ga. L. 1922, p. 63, § 1; Code 1933, §§ 13-310, 13-312; Ga. L. 1943, p. 257, § 1; Ga. L. 1945, p. 403, § 1; Ga. L. 1947, p. 673, § 1a; Ga. L. 1949, p. 526, § 1; Ga. L. 1965, p. 540, § 3; Code 1933, § 41A-205, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1986, p. 458, § 2; Ga. L. 1989, p. 1211, § 2; Ga. L. 1996, p. 848, § 1; Ga. L. 1997, p. 485, § 3.)

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**Classification of position.** — Position of deputy commissioner of banking and finance is a position of unclassified service within the State Merit System. 1975 Op. Att’y Gen. No. U75-57.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 103. **C.J.S.** — 9 C.J.S., Banks and Banking, § 139.

#### **7-1-36. Oath and bond of commissioner, deputy commissioner, and examiners.**

(a) Before entering upon the duties of their offices, the commissioner, each deputy commissioner, and each examiner shall take an oath before the Governor or one of the Justices of the Supreme Court to support the Constitution of the United States and the Constitution of Georgia and to execute faithfully the duties of their respective offices, which oath shall be in writing and subscribed to by the commissioner, each deputy commissioner, or each examiner, as the case may be, and filed in the Governor’s office in the case of the commissioner and filed in the commissioner’s office in the case of each deputy commissioner and each examiner. Each of them shall also give bond to the State of Georgia with security or securities approved by the Governor in the sum of \$50,000.00 in the case of the



commissioner and in the sum of \$10,000.00 in all other cases, conditioned as follows:

(1) That the officer will faithfully discharge, execute, and perform all and singular the duties required of such officer and which may be required by the Constitution and laws of the State of Georgia;

(2) That the officer will faithfully account for all moneys that may be received by such officer from time to time by virtue of his office; and

(3) That the officer will safely deliver to the successor of such office all books, moneys, vouchers, accounts, and effects whatever belonging to said office.

(b) The surety on the bonds shall be a regular incorporated surety company or companies qualified to do business in the State of Georgia, and the premium on the bonds shall be paid as other expenses of the department. Notwithstanding the foregoing, the requirements of this subsection as to surety may be fulfilled by the participation of the department in any surety bond program covering other state officials and employees which provides the required level of surety whether such surety is underwritten by a company qualified to do business in this state or by a self-insurance surety bond program established by law.

(c) Notwithstanding the foregoing, the oath of office of any deputy commissioner or examiner may be administered by the commissioner. (Ga. L. 1919, p. 135, art. 2, §§ 6, 11; Code 1933, §§ 13-306, 13-311; Code 1933, § 41A-206, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1984, p. 22, § 7; Ga. L. 1989, p. 1211, § 3.)

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the provisions, decisions under former Ga. L. 1919, p. 135 and former Code 1933, § 13-306 have been included in the annotations for this Code section.

**Liability of commissioner.** — In suit against superintendent of banks (now commissioner of banking and finance), and surety on the superintendent's bond for loss suffered by depositor by the superintendent's failure to discover insolvency of certain savings and loan company, superintendent could not be held civilly liable for the superintendent's erroneous judgment that the superintendent had no supervisory pow-

ers over the corporation unless facts were alleged to show that the superintendent's judgment was willful, malicious, fraudulent, and corrupt. *Gormley v. State*, 54 Ga. App. 843, 189 S.E. 288 (1936).

**Stockholders have no recourse against commissioner.** — Director of bank, and not superintendent of banks (now commissioner of banking and finance), is in charge of business, and stockholders of a failed bank have no recourse against superintendent of banks, or the superintendent's bond, because of mismanagement of directors and officers. *Hill v. Fidelity & Deposit Co.*, 44 F.2d 624 (N.D. Ga. 1930).

**7-1-37. Restrictions on commissioner, deputy commissioners, and examiners.**

(a) Except as provided in subsections (c), (d), and (e) of this Code section, the commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibilities, or any examiner employed by the department shall not directly or indirectly:

(1) Receive any money or property as a loan from or become indebted to any financial institution or from or to any director, officer, agent, employee, attorney, or subsidiary of a financial institution;

(2) Receive any money or property as a gift from any financial institution or from any director, officer, agent, employee, attorney, or subsidiary of a financial institution, unless consistent with the ethics in government policy of this state;

(3) Give any money or property as a gift to any financial institution or to any director, officer, agent, employee, attorney or subsidiary of a financial institution, unless consistent with the ethics in government policy of this state;

(4) Own any share in or securities of a financial institution or otherwise have an ownership interest in a financial institution; or

(5) Engage in the business of a financial institution.

(b) For purposes of this Code section and subject to subsection (c) of this Code section, the term “financial institution” shall include a bank holding company and any subsidiary of a bank holding company.

(c) Notwithstanding the provisions of subsection (a) of this Code section, the commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibilities, or examiners employed by the department may borrow money from and otherwise deal with any financial institution or subsidiary thereof existing under the laws of the United States or of any state other than this state, provided the obligee financial institution or subsidiary is not examined or regulated by the department. For the purposes of this subsection, a financial institution shall not be considered regulated solely because it is required to file an exemption from licensing under Code Section 7-1-1001 or solely because it is owned or controlled by another bank or corporation which is or may be examined or regulated by the department. All extensions of credit, including but not limited to such permitted loans, which obligate the commissioner or any deputy commissioner to such a financial institution or subsidiary, directly or contingently by way of guaranty, endorsement, or otherwise, or which renew or modify existing obligations shall be reported by the individual concerned to the Attorney General in writing,



within ten days after the execution thereof, showing the nature of the undertaking and the amount and terms of the loan or other transaction. All credit obligations of a similar nature to those set forth above on the part of any other department employee with financial institution or licensee supervisory responsibilities or examiner shall be reported to the commissioner within ten days after the execution thereof.

(d) Nothing in this Code section shall prohibit the commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibilities, or any examiner of the department from maintaining a deposit in any financial institution, purchasing banking services other than credit services, or owning a single share in a credit union in the ordinary course of business and under rates and terms generally available to other customers of the financial institution. The provisions of this Code section shall not be applicable in the cases of a lender credit card obligation to a financial institution where the maximum outstanding credit may not exceed \$10,000.00 nor to any other credit obligation fully secured by the pledge of a deposit account in the lending institution, provided that the financial institution is not within the employee's assigned examination authority and provided the rates and terms of all such obligations are not preferential in comparison to similar obligations of the financial institution's other customers. Such exempt obligations shall, however, be reported as provided in subsection (c) of this Code section, and the employee shall be disqualified from any dealings with the obligee financial institution.

(e)(1) The commissioner, a deputy commissioner, a department employee with financial institution or licensee supervisory responsibilities, or an examiner of the department may be permitted to own securities of a financial institution under any of the following circumstances:

(A) A deputy commissioner, a department employee with financial institution or licensee supervisory responsibilities, or an examiner of the department may own such a security if the security was obtained prior to commencement of employment with the department;

(B) A deputy commissioner, a department employee with financial institution or licensee supervisory responsibilities, or an examiner of the department may own such a security if the ownership of the security was acquired through inheritance; gift; stock split or dividend; merger, acquisition, or other change in corporate structure; or otherwise without specific intent on the part of the employee to acquire the interest; and

(C) The commissioner, a deputy commissioner, a department employee with financial institution or licensee supervisory responsibilities, or an examiner of the department may own such a security if the security is part of an investment fund, provided that, upon initial or

subsequent investment by the employee, excluding ordinary dividend reinvestment, the fund does not have invested, or indicate in its prospectus the intent to invest, more than 30 percent of its assets in the securities of one or more Federal Deposit Insurance Corporation insured depository institutions or Federal Deposit Insurance Corporation insured depository institution holding companies and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund.

(2) In the case of permissible acquisitions pursuant to subparagraphs (A) and (B) of paragraph (1) of this subsection, the employee shall make a full, written disclosure to the commissioner within 30 days of beginning employment or acquiring the interest. The employee is disqualified from participating in or sharing information regarding any matter or activity that concerns the financial institution. Such disqualification must not, in the judgment of the commissioner, unduly interfere with the employee's duties.

(3) In the event any covered person inadvertently and without intent on his or her part acquires an interest in a security that is not allowed by this subsection, such security shall be disposed of within 90 days of acquisition.

(f) No examiner, which for the purposes of this Code section shall include a supervisor as defined by the department, may examine a financial institution to which he or she is indebted or of which he or she owns securities under the exceptions in subparagraphs (e)(1)(A) and (e)(1)(B) of this Code section, nor may an examiner obtain credit from a financial institution if he or she has examined such financial institution in the preceding 12 months. An examiner who wishes to borrow funds from any financial institution he or she has examined in the past five years must first obtain the written permission of the commissioner. This subsection is included as an additional precaution and is not intended to preclude the operation of any other applicable law or regulation.

(g) The commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibility, or any examiner shall not directly or indirectly:

(1) Receive any money or property as a loan from any department licensee or any director, officer, agent, employee, or attorney of a department licensee, unless such employee does not examine or exercise supervisory responsibility over that licensee. Any debt owed by a deputy commissioner, department employee with financial institution or licensee supervisory responsibility, or examiner of a department licensee must be reported to the commissioner. Reporting by the commissioner shall be made to the Attorney General;

(2) Receive any money or property as a gift from any department licensee or any director, officer, agent, employee, or attorney of a

department licensee, unless consistent with the ethics in government policy of this state;

(3) Give any money or property as a gift to any department licensee or any director, officer, agent, employee, or attorney of a department licensee, unless consistent with the ethics in government policy of this state; or

(4) Engage in the business of a department licensee.

(h) No director, officer, agent, employee, or attorney of a financial institution, individually or in his or her official capacity, shall knowingly participate in a violation of this Code section. However, nothing in this Code section shall restrict the right of the commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibilities, or any examiner to deal as any other consumer with such director, officer, agent, employee, or attorney in the ordinary course of business in consumer areas of trade or commerce not regulated by the department and under terms and conditions which are not preferential.

(i) The commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibilities, or any examiner employed by the department who shall violate or participate in a violation of this Code section shall be guilty of a misdemeanor. Violation of this Code section shall be grounds for removal from office.

(j) The commissioner may adopt additional supplementary administrative policies and departmental rules governing ethical conduct and conflicts of interest on the part of employees of the department and providing certain definitions and clarifications to effectuate the purposes of this Code section. (Ga. L. 1919, p. 135, art. 2, §§ 4, 10; Ga. L. 1919, p. 135, art. 20, § 6; Code 1933, §§ 13-304, 13-310, 13-9906; Code 1933, §§ 41A-207, 41A-9904, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 2; Ga. L. 1980, p. 919, § 1; Ga. L. 1983, p. 532, § 1; Ga. L. 1985, p. 149, § 7; Ga. L. 1995, p. 673, § 4; Ga. L. 1997, p. 485, § 4; Ga. L. 2002, p. 1220, § 2.)

**The 2002 amendment**, effective July 1, 2002, in subsection (a), in the introductory paragraph, substituted “subsections (c), (d), and (e) of this Code section,” for “subsections (c) and (d) of this Code section, neither”, substituted “any department employee with financial institution or licensee supervisory responsibilities, or” for “or assistant deputy commissioner, nor”, and inserted “not”, deleted “, gift, or otherwise” following “loan” in paragraph (a)(1), added paragraphs (a)(2) and (a)(3), and redesignated former paragraphs (a)(2) and (a)(3) as present paragraphs (a)(4) and (a)(5),

respectively; in subsection (c), substituted “, any department employee with financial institution or licensee supervisory responsibilities, or” for “or assistant deputy commissioner, and” in the first sentence and substituted “other department employee with financial institution or licensee supervisory responsibilities” for “assistant deputy commissioner” in the last sentence; substituted “department employee with financial institution or licensee supervisory responsibilities,” for “assistant deputy commissioner,” in the first sentence of subsection (d); added subsection (e); redesignated former



subsection (e) as present subsection (f); inserted “or of which he or she owns securities under the exceptions in subparagraphs (e)(1)(A) and (e)(1)(B) of this Code section” in the first sentence of subsection (f); added subsection (g); redesignated former subsections (f) through (h) as present subsections (h) through (j), respectively; inserted “any department employee with financial institution or licensee supervisory responsibilities,” in the second sentence of subsection (h); substituted “any department employee with financial institution or licensee supervi-

sory responsibilities,” for “or assistant deputy commissioner,” in the first sentence of subsection (i); and inserted “and clarifications” near the end of subsection (j).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1988, “of this Code section” was added following “subsection (c)” at the end of subsection (d).

Pursuant to Code Section 28-9-5, in 2002, a comma was added following “licensee supervisory responsibilities” near the beginning of subparagraph (e)(1)(C).

## RESEARCH REFERENCES

**ALR.** — Validity and enforceability of agreement with bank officer or employee individually in connection with bank accommodation, 41 ALR 349.

### 7-1-38. Commissioner’s office expenses.

The commissioner shall be provided with suitable offices and equipment, the expense of which shall be paid by the state in the same manner as the expenses of other offices of the state government are paid. (Ga. L. 1919, p. 135, art. 2, § 8; Ga. L. 1920, p. 102, § 1; Ga. L. 1925, p. 119, § 1; Code 1933, § 13-308; Ga. L. 1963, p. 369, § 1; Code 1933, § 41A-208, enacted by Ga. L. 1974, p. 705, § 1.)

### 7-1-39. Seal of department; evidentiary effect.

The department shall adopt an official seal. Any paper executed under the seal of the department shall prima facie be deemed to have been executed by a duly authorized official of the department. (Code 1933, § 41A-209, enacted by Ga. L. 1974, p. 705, § 1.)

### 7-1-40. Delegation of authority by commissioner.

(a) Any authority, power, or duty vested in the commissioner or department by a provision of this chapter may be exercised, discharged, or performed by a deputy, assistant, examiner, or employee of the department acting in the commissioner’s name and by his delegated authority. In the case of any matters involving the exercise of discretion, the delegation of authority shall be in writing. Any such delegation by the commissioner may be revoked in the same manner in which it was granted.

(b) The commissioner shall be responsible for the official acts of such persons who act in his name and by his authority. (Code 1933, § 13-324, enacted by Ga. L. 1973, p. 526, § 2; Code 1933, § 41A-210, enacted by Ga. L. 1974, p. 705, § 1.)

**7-141. Prescribing fees; payment procedure.**

(a) The department may, by regulation, prescribe annual examination fees, license fees, registration fees, and supervision fees to be paid by the institutions and entities assigned to the department by this title for regulation, supervision, licensure, or registration. In addition, the department may, by regulation, prescribe reasonable application and related fees, special investigation fees, hearing fees, mortgage loan fees, and fees to provide copies of any book, account, report, or other paper filed in its office or for any certification thereof or for processing any papers as required by this title. Such fees may vary by type of institution regulated and nature of the work performed.

(b) The department, in its discretion, may require the payment of such fees in any manner deemed to be efficient, including collection through automated clearing-house arrangements or other electronic means, so that the state receives funds no later than the date the payment is required to be made. (Code 1933, § 41A-212, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 3; Ga. L. 1996, p. 848, § 2; Ga. L. 2002, p. 1220, § 3.)

**The 2002 amendment**, effective July 1, 2002, designated the existing provisions as subsection (a) and added subsection (b).

**7-142. Enforcement of payment of fees.**

In the event any financial institution shall fail or refuse to pay on demand the amount fixed as fees for examinations, the department may proceed through the Attorney General to collect the same by action at law. (Ga. L. 1919, p. 135, art. 3, § 6; Code 1933, § 13-406; Ga. L. 1966, p. 692, § 23; Code 1933, § 41A-213, enacted by Ga. L. 1974, p. 705, § 1.)

**7-143. Disposition of fees collected; payment of expenses from appropriations.**

Fees prescribed by this chapter shall be collected by the department and deposited with the Office of Treasury and Fiscal Services. The department may, at its discretion, remit such amounts net of the cost of recovery, which cost may include fees paid to a collection agency or attorney for recovery of moneys due the department. All of the expenses incurred in connection with the conduct of the business of the department shall be paid out of the appropriations of funds to the department by the General Assembly. Such expenses shall include all expenses incurred as travel expenses by personnel of the department when away from their official station as assigned by the commissioner. (Ga. L. 1919, p. 135, art. 2, §§ 13, 14; Code 1933, § 13-313; Code 1933, § 13-305, enacted by Ga. L. 1965, p. 540, § 1; Code 1933, § 41A-211, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1995, p. 673, § 5; Ga. L. 2003, p. 843, § 1.)



**The 2003 amendment**, effective July 1, 2003, added the second sentence.

### PART 3

#### OPERATIONS OF DEPARTMENT OF BANKING AND FINANCE

**Law reviews.** — For note discussing the interrelationship between the International Banking Act, the provisions of the Financial Institutions Code relating to domestic banking, and the Foreign Corporations Chapter of the Corporation Code in the regulation of international banking in Georgia and comparing Georgia provisions with those of New York and California, see 27 Mercer L. Rev. 827 (1976).

#### 7-1-60. General scope of supervision.

Except where otherwise specifically provided, the department shall enforce and administer all laws of this state relating to financial institutions and shall exercise general supervision over financial institutions in accord with the underlying objectives of this chapter. (Code 1933, § 41A-301, enacted by Ga. L. 1974, p. 705, § 1.)

**Law reviews.** — Business Associations, see 53 Mercer L. Rev. 109 (2001). For review of 1996 banking and finance legislation, see 13 Ga. St. U. L. Rev. 1.

#### RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking, § 10-14.

#### 7-1-61. Rules and regulations.

(a) The department shall have the authority to promulgate rules and regulations to effectuate the objectives or provisions of this chapter. Without limiting the generality of the foregoing, the department is expressly authorized to make rules and regulations, consistent with this chapter, relating to organization, operations, and powers of financial institutions to:

(1) Enable financial institutions existing under the laws of this state to compete fairly with financial institutions and others providing financial services in this state existing under the laws of the United States, other states, or foreign governments; or

(2) Protect financial institutions jeopardized or challenged by new economic or technological conditions or by significant changes in the legal environment.

(b) In the exercise of the discretion permitted by this Code section, the commissioner shall consider:

(1) The ability of financial institutions to exercise any additional powers in a safe and sound manner;

(2) The authority of national banks operating pursuant to federal law, regulation, or authoritative pronouncement;

(3) The powers of other entities providing financial services in this state; and

(4) Any specific limitations on financial institution operations or powers contained in this chapter.

(c) In the further exercise of the discretion permitted by this Code section and to provide parity with other federally insured financial institutions, the commissioner may, by specific order directed to an individual financial institution or category of financial institutions, modify or amend the following qualifying or limiting requirements imposed on financial institutions by this chapter:

(1) Collateral requirements and limits on the amount of obligations owing to it from any one person or corporation;

(2) Loan to value or other limitations in real estate lending;

(3) Limitations on the amount of investments in stock or other capital securities of a corporation or other entity; and

(4) Limitations on the amount of bank acceptances to be issued.

No such order will be issued unless the commissioner determines that such activity will not present undue safety and soundness risks to the financial institution or institutions involved. In making such a determination, the commissioner shall consider the financial condition and regulatory safety and soundness ratings of the institution or institutions affected and the ability of management to administer and supervise the activity. Any such order pursuant to this subsection will be available for public review.

(d) Rules and regulations promulgated by the department may provide for controls, registration, or restrictions reasonably necessary to:

(1) Prevent unfair or deceptive business practices which are prohibited under Code Section 10-1-393;

(2) Prevent deceptive or misleading business practices by financial services providers which may occur by way of alternate delivery systems for the provision of financial products and services such as the Internet or other telecommunication capabilities; or

(3) Prevent or control unfair or deceptive business practices which would operate to the detriment of any competing business or enterprise or to persons utilizing the services of any financial institution, its subsidiary, or affiliate.

(e) All rules and regulations shall be promulgated in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act,"

including the requirements for hearing as stated in that chapter. Regulations issued under this or other provisions of this chapter may make appropriate distinctions between types of financial institutions and may be amended, modified, or repealed from time to time. (Code 1933, § 41A-302, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1249, § 1; Ga. L. 1995, p. 673, § 6; Ga. L. 1997, p. 485, § 5; Ga. L. 2000, p. 174, § 3.)

**Administrative rules and regulations.** — Investment securities, Official Compilation of Rules and Regulations of State of Georgia, Department of Banking and Finance, Banks, Chapter 80-1-4.

Borrowed money, Official Compilation of Rules and Regulations of State of Georgia,

Department of Banking and Finance, Banks, Chapter 80-1-9.

Public disclosure of information, Official Compilation of Rules and Regulations of State of Georgia, Department of Banking and Finance, Banks, Chapter 80-1-11.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 2 Am. Jur. 2d, Administrative Law, § 52.

**C.J.S.** — 9 C.J.S., Banks and Banking,

§§ 10-14, 139. 73 C.J.S., Public Administrative Bodies and Procedure, §§ 53, 70.

### 7-1-62. Accounting procedures.

The department may promulgate regulations concerning the manner in which the books of financial institutions will be maintained in order to assist the department in its examinations and other supervisory activities, provided that, in all events:

(1) A financial institution shall enter on its books a complete and accurate account of all of its assets, whether the assets are in its name or the name of others, at values which shall not, without the prior approval of the department, exceed the actual cost of the assets to the financial institution; and

(2) A financial institution shall enter on its books a complete and accurate account of its liabilities, its borrowings, and the security interests it has granted and shall maintain additional accounts for losses and expenses. (Code 1933, § 41A-303, enacted by Ga. L. 1974, p. 705, § 1.)

**Cross references.** — Authority of department to issue orders requiring financial institutions to open and keep such books as

will allow the department to ascertain true conditions of financial institutions, § 7-1-91.

### 7-1-63. Retention of records.

(a) The department shall issue regulations classifying records kept by financial institutions and prescribing the period, if any, for which records of each class shall be retained and the form in which such records shall be maintained. Such periods may be permanent or for a lesser term of years.



In issuing such regulations, consideration shall be given to the objectives of this chapter and to:

- (1) Evidentiary effect in actions at law and administrative proceedings in which the production of records of financial institutions might be necessary or desirable;
- (2) State and federal statutes of limitation applicable to such actions or proceedings;
- (3) Availability of information contained in the records of the financial institution from other sources;
- (4) Requirements of electronic systems of transferring funds; and
- (5) Other pertinent matters;

so that financial institutions will be required to retain records for as short a period as is commensurate with interests of customers, shareholders, and the people of this state.

(b) The regulations of the department shall not require financial institutions to maintain originals of checks or items for the payment of money or original computer tapes or original records with respect to accounts which have been inactive for a period of 12 successive months. Where a financial institution employs computers, its records may consist of legible products of computer operations.

(c) Any copy of a record or of a reproduction of a record stored in an electronic or photographic medium permitted to be kept in lieu of the original, under this Code section or the regulations of the department, including legible products of computer operations, shall be admissible in evidence as though it were the original. (Ga. L. 1953, p. 70, § 3; Ga. L. 1966, p. 692, §§ 45-47; Code 1933, § 41A-304, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 4.)

## JUDICIAL DECISIONS

**Applicability.** — O.C.G.A. § 7-1-63 was not applicable in an action alleging that a bank and a savings account. *Emmett v. Regions Bank*, 238 Ga. App. 455, 518 S.E.2d 472 (1999).

### **7-1-64. Department examinations and investigations; disclosure of information or prior notice regarding examinations of financial institutions.**

(a) Except as otherwise provided in subsection (b) of this Code section, the department shall examine all financial institutions at least once each year and may examine or investigate any financial institution more frequently at any time it deems such action necessary or desirable. At least once annually the examination shall consist of a comprehensive review of the accounts, records, and affairs of the institution.



(b) The department may, consistent with the objectives of this chapter and the purposes listed below, alter the examination frequency and scope as set out in subsection (a) of this Code section:

(1) To achieve cooperation and coordination with other state and federal regulatory authorities including but not limited to examination programs of banks or bank holding companies having multistate operations;

(2) To assure that appropriate time and attention are devoted to the supervision of troubled financial institutions; or

(3) To minimize the examination burden on well-managed financial institutions which have consistently been operated with safe and sound banking practices.

(c) In the case of a financial institution which is a member of the Federal Reserve System or whose deposits are insured by a public body of the United States, the department may accept, in lieu of any examination required by this Code section, examinations or reports thereof made pursuant to the Federal Reserve Act or statutes of the United States authorizing such insurance.

(d) Employees of the department shall not divulge any information or provide prior notice, directly or indirectly, to any officer, director, agent, representative, or employee of a financial institution concerning the time or date of examination of the financial institution except in accordance with internal policy prescribed by the commissioner. Employees violating the policy of the commissioner relating to information or prior notice concerning examinations shall be subject to immediate dismissal. (Ga. L. 1919, p. 135, art. 3, §§ 1, 2; Ga. L. 1925, p. 165, § 10; Ga. L. 1927, p. 344, § 3; Code 1933, §§ 13-401, 13-402, 25-122, 109-503; Ga. L. 1935, p. 114, § 1; Ga. L. 1937-38, Ex. Sess., p. 307, § 5; Ga. L. 1943, p. 279, § 1; Ga. L. 1945, p. 253, §§ 1, 2; Ga. L. 1956, p. 742, § 4; Ga. L. 1960, p. 977, § 1; Ga. L. 1960, p. 1175, § 1; Ga. L. 1962, p. 74, § 3; Ga. L. 1966, p. 692, §§ 18, 19; Ga. L. 1968, p. 465, § 8; Code 1933, § 41A-305, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 1; Ga. L. 1995, p. 673, § 7; Ga. L. 1997, p. 485, § 6.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1995, “are” was substituted for “is” in paragraph (b)(2).

**U.S. Code.** — The Federal Reserve Act,

referred to in subsection (c) of this section, is codified generally throughout 12 U.S.C. See 12 U.S.C. § 226.

## JUDICIAL DECISIONS

**Editor’s notes.** — In light of the similarity in the provisions, decisions under former Code 1933, § 13-401 have been included in the annotations for this Code section.

**Liability of commissioner.** — In suit against superintendent of banks (now commissioner of banking and finance), and surety on the superintendent’s bond for loss

suffered by depositor by the superintendent's failure to discover insolvency of certain savings and loan company, superintendent could not be held civilly liable for the superintendent's erroneous judgment that the superintendent had no supervisory pow-

ers over the corporation unless facts were alleged to show that the superintendent's judgment was willful, malicious, fraudulent, and corrupt. *Gormley v. State*, 54 Ga. App. 843, 189 S.E. 288 (1936).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 108.

11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1217 and 1219.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 10-14.

**ALR.** — Use or publication of reports of, or information obtained by, bank examiners, as affected by their alleged confidential character, 123 ALR 1278.

#### 7-1-65. Examinations and investigations on request.

When requested in writing by the board of directors or holders of a majority of the shares of a financial institution, the department, at a time fixed by it, shall examine or investigate the affairs and condition of the financial institution. However, this provision shall not be construed to mean that such institution, directors, or shareholders shall have any greater right to require the department to disclose the results of such examination or investigation than they have in case of any examination or investigation at the insistence of the department nor shall the department be required under this Code section to make more than one examination per year of any financial institution. (Code 1933, § 41A-306, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**ALR.** — Use or publication of reports of, or information obtained by, bank examiners, as affected by their alleged confidential character, 123 ALR 1278.

#### 7-1-66. Method of examination and investigations; special examiners; subpoenas.

(a) Examinations and investigations shall be made by the commissioner or by qualified examiners or employees empowered in writing by the department to make examinations or investigations. The department may, when the occasion requires, appoint special examiners and prescribe their duties and powers.

(b) Officials authorized to make examinations or investigations shall have the power and authority to administer oaths and to examine under oath any person (including any officer, director, agent, attorney, member, or employee of any financial institution) whose testimony may be relevant to the examination or investigation. Such officials shall have the authority and power to compel the appearance and attendance of any such person

and the production by such person of pertinent books and papers, including books and papers to which the person has access because of his position with a financial institution.

(c) If any person shall fail or refuse to appear or to testify or to produce books and papers after being ordered to do so pursuant to this Code section, such failure or refusal may be reported in writing to the principal court; and said court shall thereupon cause a subpoena to be issued requiring such person to attend, testify, and produce books and papers. For failure to obey such subpoena, the person may be adjudged in contempt and punished accordingly. (Ga. L. 1919, p. 135, art. 2, § 18; Ga. L. 1919, p. 135, art. 3, § 3; Ga. L. 1919, p. 135, art. 20, § 1; Code 1933, §§ 13-318, 13-403, 13-9901; Ga. L. 1966, p. 692, § 20; Code 1933, §§ 41A-307, 41A-9903, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 19.)

**Cross references.** — Authority of department to issue orders requiring financial institutions to submit records and affairs to

legally conducted examinations or investigations by department, § 7-1-91.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 108.

11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1217 and 1219.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 10-14.

**ALR.** — Bank's liability, under state law, for disclosing financial information concerning depositor or customer, 81 ALR4th 377.

#### 7-1-67. Reports of examinations.

(a) Any official who shall make an examination pursuant to this chapter shall reduce the result thereof to writing in such form as shall be prescribed by the department. Such report shall contain a full, true, and correct statement of the condition of the financial institution in the case of a comprehensive examination or of the matter subject to inquiry in the case of other examinations.

(b) Each report shall be the property of the regulatory agency which generates such report; provided, however, that a copy of such report may be furnished to the examined financial institution for its internal, confidential use. A financial institution or any officer, director, or employee thereof shall not disclose a report or any portion of its contents. If a subpoena or discovery request is received for a report or any portion of its contents, the financial institution must deliver a copy of such subpoena or discovery request to the department immediately. (Ga. L. 1919, p. 135, art. 3, § 4; Code 1933, § 13-404; Ga. L. 1966, p. 692, § 21; Code 1933, § 41A-308, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1998, p. 795, § 4.)



## RESEARCH REFERENCES

- C.J.S.** — 9 C.J.S., Banks and Banking, § 10-14. or information obtained by, bank examiners, as affected by their alleged confidential character, 123 ALR 1278.
- ALR.** — Use or publication of reports of,

**7-1-68. Reports to department; publication of summaries; penalty for noncompliance.**

(a) The department may require reports on the condition of or any particular facts concerning any financial institution at any time the department deems it necessary or advisable.

(b) The form of all reports, the information to be contained in them, and the date on which they shall be due shall be prescribed by the department. The reports shall be verified by the oath or affirmation of the president, secretary, or other managing officer of the institution.

(c) Every financial institution shall publish annually abstract summaries of two of its reports of condition designated for this purpose by the department and shall file proof of such publication with the department. Such publication shall be made only once in a newspaper of general circulation in the county of the main office of the institution. The department may waive this requirement, in whole or in part, with respect to financial institutions which make their financial statements readily available to the public, including their customer base, and with respect to a class of financial institutions which does not do business with the public generally and may limit the required publication to the customer base served by the institution.

(d) Any financial institution which fails to prepare or publish any report or to furnish any proof of publication, in accordance with this Code section, shall pay the department a penalty of \$100.00 for each day after the time fixed by the department for filing such report, making such publication, or furnishing such proof of publication, but the department may, in its discretion, relieve any financial institution from the payment of such penalty, in whole or in part, if good cause be shown. If a financial institution fails to pay a penalty from which it has not been relieved, the department may, through the Attorney General, maintain an action at law to recover it. (Ga. L. 1919, p. 135, art. 4, §§ 1, 2, 5; Ga. L. 1920, p. 102, § 1; Ga. L. 1925, p. 165, § 10; Ga. L. 1927, p. 344, § 3; Code 1933, §§ 13-501, 13-502, 25-122, 109-503; Ga. L. 1935, p. 114, § 1; Ga. L. 1937, p. 425, § 1; Ga. L. 1937-38, Ex. Sess., p. 307, § 5; Ga. L. 1943, p. 279, § 1; Ga. L. 1956, p. 742, § 4; Ga. L. 1960, p. 977, § 1; Ga. L. 1960, p. 1175, § 1; Ga. L. 1962, p. 74, § 3; Ga. L. 1968, p. 465, § 8; Code 1933, § 41A-309, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 5; Ga. L. 1981, p. 1366, § 2; Ga. L. 1995, p. 673, § 8; Ga. L. 1998, p. 795, § 5.)



## OPINIONS OF THE ATTORNEY GENERAL

Publication required under former Code 1933, § 41A-309 (see O.C.G.A. § 7-1-68(c)) need not be an official organ designated

pursuant to former Code 1933, §§ 39-1103 and 39-1107 (see O.C.G.A. § 9-13-142). 1979 Op. Att'y Gen. No. U79-25.

## RESEARCH REFERENCES

C.J.S. — 9 C.J.S., Banks and Banking, § 27.

ALR. — Use or publication of reports of,

or information obtained by, bank examiners, as affected by their alleged confidential character, 123 ALR 1278.

**7-1-69. Retention of reports.**

The reports of examinations and investigations made by the department and reports made by financial institutions shall be preserved by the department for a period of five years, after which they may be destroyed. (Ga. L. 1919, p. 135, art. 2, § 19; Code 1933, § 13-319; Code 1933, § 41A-310, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-70. Disclosure of information.**

(a) Records of the department, regardless of the medium by which stored, are confidential. Except as otherwise provided in this Code section, this chapter, or departmental rule or regulation, and, notwithstanding the provisions of Article 4 of Chapter 18 of Title 50, such records shall not be open to inspection by or made available to the public. The commissioner and all other officials and employees of the department shall not disclose facts and information obtained in the course of their duties, including information obtained from examinations, investigations, and reports as required or authorized in this part. The department may, however, provide by rule, regulation, or order for public access to certain records which, in the opinion of the commissioner, do not contain sensitive information and from which disclosure the public would benefit.

(b) Subject to the exceptions, safeguards, and limitations contained in subsection (c) of this Code section, the restrictions of subsection (a) of this Code section shall not apply to disclosures:

(1) Within the department or made to the Governor in the course of official duties;

(2) Required by law, including disclosures required by subpoena or other legal process of a court or administrative agency having competent jurisdiction in legal proceedings and, where applicable, when the financial institution is a party or where the information is not otherwise available upon direct subpoena of a financial institution;

(3) In prosecutions or other court actions to which the department or the commissioner is a party;

(4) Made to federal or state financial institution supervisory agencies, other federal or state regulatory agencies with legal authority over such institution, the United States Department of Justice (including the Federal Bureau of Investigation), the United States Department of the Treasury, the Georgia Bureau of Investigation, or state or local law enforcement authorities;

(5) Made to any officer, attorney, or director of the involved financial institution, made to any officer, attorney, or director of the involved financial institution's holding company, or with the written consent of said financial institution or holding company;

(6) Made in a publication of the department which is available to the general public;

(7) Of general economic and similar data considered by the department in regard to requests for new articles, new branches, changes in the location of facilities, or similar matters made to parties interested in the department's action in regard thereto; and

(8) Made to a financial institution concerning the past job performance of a prospective employee with the written consent of such prospective employee, provided such written consent shall not be required in circumstances provided for in Code Section 7-1-840.

(c) The following exceptions, safeguards, and limitations shall apply:

(1) Disclosures made under subsection (b) of this Code section shall be made, where appropriate, under safeguards designed to prevent further dissemination of confidential data; provided, however, that for disclosures of suspected criminal activity made under paragraph (4) of subsection (b) of this Code section, the confidentiality safeguards already in place within those agencies shall be considered adequate. Except for disclosures under paragraph (2) of subsection (b) of this Code section, the department shall not be required to make authorized disclosures where it deems such disclosures undesirable;

(2) All disclosures shall be limited to only those documents directly relevant to the inquiry or legal dispute at issue; and

(3) The documents listed below shall be considered absolutely privileged and confidential and shall be exempt from open inspection and not subject to disclosure by the department without a specific order of court pursuant to Code Section 7-1-90, which order specifically holds the public interest in the safety and soundness of the banking system and its regulation to be outweighed by other interests of justice. Such exempt documents shall include:

(A) Departmental internal investigations, documents, and notes which reflect the deliberative processes of employees;

(B) Opinions provided in confidence to the department regarding proposed new banks;

(C) Informal notes and memos of the department that are not purely factual in nature;

(D) Advisory opinions;

(E) Recommendations, summaries, and analyses that are utilized for departmental internal purposes and are not final orders or reports; and

(F) Other similar materials or notes.

(d) Notwithstanding any other provision of this Code section, the commissioner may, without waiving any privilege, authorize access to confidential supervisory information for any appropriate governmental, law enforcement, or other public purpose.

(e) Violation of this Code section shall be grounds for removal from office. (Code 1933, § 41A-311, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 6; Ga. L. 1982, p. 3, § 7; Ga. L. 1989, p. 1211, § 4; Ga. L. 1998, p. 795, § 6; Ga. L. 2002, p. 1220, § 4; Ga. L. 2003, p. 843, § 2.)

**The 2002 amendment**, effective July 1, 2002, in subsection (b), substituted “and, where applicable, when the” for “where the” in paragraph (b)(2), in paragraph (b)(4), substituted “or state financial institution” for “bank”, inserted “other federal or state regulatory agencies with legal authority over such institution,” and inserted “state or”, and substituted “publication of the department which is available to the general

public” for “summary of condition of financial institutions published by the department” in paragraph (b)(6).

**The 2003 amendment**, effective July 1, 2003, in paragraph (b)(5), inserted “involved”, substituted “, made to any officer, attorney, or director of the involved financial institution’s holding company,” for “involved”, and added “or holding company”.

## JUDICIAL DECISIONS

**Cited** in *Gwinnett Com. Bank v. Flake*, 151 Ga. App. 578, 260 S.E.2d 523 (1979).

## OPINIONS OF THE ATTORNEY GENERAL

**Disclosure of deficiencies.** — Department of Banking and Finance may report deficiencies uncovered during examination to local officials involved. To withhold knowledge of violations of law from officials who have

placed public funds in a bank serves no legitimate interest of the bank and threatens serious injury to the public. 1979 Op. Att’y Gen. No. 79-12.

## RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking, § 10-14.

**ALR.** — Use or publication of reports of,

or information obtained by, bank examiners, as affected by their alleged confidential character, 123 ALR 1278.



Bank's liability, under state law, for disclosing financial information concerning depositor or customer, 81 ALR4th 377.

#### **7-1-71. Removal of officers, directors, or employees.**

(a) The department shall have the right to require the immediate suspension from office of any director, officer, or employee of any financial institution who shall be found by it:

(1) To be dishonest, incompetent, or reckless in the management of the affairs of the financial institution;

(2) To have persistently violated the laws of this state;

(3) To have violated the lawful orders, regulations, or conditions of a written agreement of or with the department;

(4) To have been indicted for any crime involving moral turpitude or breach of trust;

(5) To have evidenced an inability to conduct his or her own financial affairs or the affairs of a company in which such individual owns a majority interest or has responsibility for financial matters in a fiscally responsible, diligent, or lawful fashion; or

(6) To have engaged in any unsafe or unsound practice in connection with any insured depository institution.

(b) The department shall serve written notice upon the party of its determination to suspend such person from office pursuant to subsection (a) of this Code section. The suspension order shall be effective upon such service.

(c) Any person suspended under this Code section may request his or her reinstatement in writing delivered to the department within ten days of his or her suspension. If such reinstatement is not requested, the director, officer, or employee shall be considered permanently removed.

(d) Upon request for reinstatement, the department shall conduct an internal review of the matter during which such person has the opportunity to state his or her case to the commissioner. The department shall deliver the findings of the hearing to such person. If the person requests further review, the department may refer the matter to the state agency for administrative hearings under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," where a nonpublic hearing shall be held to review the department's decision. The final decision of the department shall be conclusive, except as it may be subject to judicial review under Code Section 7-1-90. (Ga. L. 1919, p. 135, art. 5, § 3; Code 1933, § 13-603; Code 1933, § 41A-312, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1983, p. 602, § 1; Ga. L. 1995, p. 673, § 9; Ga. L. 1997, p. 485, § 7.)



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 2 Am. Jur. 2d, Administrative Law, §§ 41, 45, 47-49.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 10-14.

### 7-1-72. Regulation of persons performing services for financial institutions.

(a) Notwithstanding other provisions of law and consistent with the objectives of this chapter as set forth in Code Section 7-1-3 and subject to the procedures provided in regulations of the department, a financial institution may provide financial services to its customers either directly or through employment of duly licensed persons provided such financial institution or its licensed employee or agent has qualified under other laws otherwise applicable to other providers of such financial services.

(b) Where financial services are being performed by a person or corporation for a financial institution, such person or corporation shall be subject to:

(1) Examination and investigation by the department relative to character, reputation, and financial stability; and

(2) Regulation by the department in regard to such services to the same extent as if such services were being performed by the financial institution for its own internal benefit or as an extension of the range of financial services products offered to customers of the financial institution.

(c) In the event of conflicting statutory responsibilities, except as otherwise provided by law, the department shall not grant licenses to providers of financial services to or through financial institutions. The department shall be the responsible authority in reviewing, authorizing, or otherwise regulating, consistent with this chapter, the contractual relationship entered into by financial institutions for the provision of such services or incidental to application for further licensing.

(d) For purposes of this Code section, “financial services” shall include, but is not limited to, business and consumer financial record keeping, investments, planning and advisory assistance, surety, brokerage, information, and protective services performed for a financial institution which are normally performed by the financial institution for its own benefit or provided to the customers of the financial institution incidental to its conduct of the banking business. The department may further define “financial services” to include other activities of a financial nature which it determines to be consistent with the safe and sound operation of a banking business, not otherwise in violation of this chapter, and in the public interest. (Code 1933, § 13-411, enacted by Ga. L. 1973, p. 526, § 3; Code 1933, § 41A-313, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 7; Ga. L. 1987, p. 1586, § 3; Ga. L. 2004, p. 458, § 1.)

The 2004 amendment, effective July 1, 2004, substituted “procedures provided in regulations” for “prior approval” near the middle of subsection (a).

#### RESEARCH REFERENCES

C.J.S. — 9 C.J.S., Banks and Banking, § 7.

#### 7-1-73. Regulation of affiliates.

The department may examine or investigate any affiliate of a financial institution for the purpose of determining the condition of the financial institution to the same extent and in the same manner as it may examine or investigate the financial institution itself. (Code 1933, § 13-411, enacted by Ga. L. 1973, p. 526, § 3; Code 1933, § 41A-314, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 8.)

#### RESEARCH REFERENCES

C.J.S. — 9 C.J.S., Banks and Banking, § 7.

#### 7-1-74. Annual report of department.

For each calendar year the department shall compile and publish an annual report in such form and containing such information as it may determine necessary to summarize reasonably its operations. The report may contain recommendations which the department may have for changes in the laws governing financial institutions. (Ga. L. 1919, p. 135, art. 2, §§ 15, 16, 17; Ga. L. 1919, p. 135, art. 7, § 28; Ga. L. 1920, p. 102, § 1; Ga. L. 1922, p. 63, § 1; Ga. L. 1925, p. 119, § 1; Code 1933, §§ 13-315, 13-316, 13-317; Code 1933, § 41A-315, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1997, p. 485, § 8.)

#### 7-1-75. Discretion of department.

Whenever in this chapter the department is authorized but not required to take any action, the taking of such action shall be within the discretion of the commissioner or his duly authorized deputy. The department shall not be required to grant opportunity for hearing except where such hearing is specifically required by this chapter or Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” The department shall maintain accurate memoranda or transcripts of all hearings conducted by the department pursuant to this Code section. (Code 1933, § 41A-316, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-76. Department may act after time limit without resubmittal; withdrawal of applications and requests; imposition of conditions; nullification.**

(a) Failure of the department to act within any of the time limits established by this chapter or regulations issued pursuant thereto shall not deprive the department of jurisdiction thereafter to act in regard to the matter involved without need for resubmittal of any application, request, or similar action.

(b) Any action, application, or request requiring department approval under this chapter may be withdrawn by the applicant prior to department action thereon without prejudice to the applicant's right to resubmit such application at a later date. If such application has been forwarded to the department through the Secretary of State, the department shall notify the Secretary of State of any such withdrawal and that the application or request is no longer pending.

(c) The department may impose conditions on any approval, including but not limited to conditions designed to address competitive, financial, managerial, safety and soundness, convenience and needs, compliance, and other concerns, to ensure that such approval is consistent with the provisions of this chapter.

(d) The department may nullify a decision on any request, action, or application if:

(1) The department becomes aware of any material misrepresentation or omission by the applicant;

(2) The department is not promptly informed by the applicant of a subsequent material change in circumstances;

(3) The decision is contrary to law, regulation, or departmental policy;  
or

(4) The decision was granted due to clerical or administrative error or was based on a material mistake of law or fact. (Code 1933, § 41A-317, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1998, p. 795, § 7.)

**7-1-77. Approval by commissioner of state or federal rules and regulations affecting financial institutions.**

Any rule, regulation, order, or administrative directive issued by a state or federal official, agency, or entity which is intended to be applicable to banks, banking associations, bank holding companies, building and loan associations and savings and loan associations, credit unions, or companies engaged in selling money orders or any other company or financial institution under the supervision of the commissioner and required to report to the commissioner or subject to rules and regulations issued by the



commissioner shall be effective as to any such company or financial institution only after the rule, regulation, order, or other directive has been approved in writing by the commissioner. (Code 1933, § 41A-318, enacted by Ga. L. 1979, p. 950, § 1.)

#### RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking,  
§ 10-14.

#### **7-1-78. Agreements with other regulatory authorities.**

(a) The department may, at its discretion, enter into cooperative or reciprocal agreements with other regulatory authorities and may furnish to such authorities information contained in the examinations, reports, and institution files, provided the information is to be used for confidential, regulatory purposes.

(b) Furnishing information as permitted by this Code section shall not be deemed to change the confidential character of the information furnished.

(c) The department may accept reports of examination and other records from such authorities in lieu of conducting its own examination.

(d) The department may take such actions as are reasonably necessary, either independently or with such regulatory agencies, to facilitate the regulation of financial services providers doing business in this state. (Code 1981, § 7-1-78, enacted by Ga. L. 1995, p. 673, § 10; Ga. L. 2004, p. 458, § 2.)

**The 2004 amendment**, effective July 1, 2004, deleted “state or federal” preceding “regulatory” near the beginning of subsection (a).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and  
Banking Institutions, § 20 et seq.

#### **7-1-79. Discretionary expedited approval process; considerations.**

(a) The department may determine that formal approvals for certain transactions or activities to be conducted by its regulated entities are not necessary but may be replaced by a discretionary expedited approval process to begin with written notice to the department by the entity which describes the transaction or activity in a form and with a specificity acceptable to the department. For such instances, the department shall promulgate rules and regulations consistent with the authority provided to it in this chapter.



(b) In the exercise of the discretion permitted by this Code section, the commissioner shall consider:

(1) Whether the transaction or activity poses unacceptable safety and soundness risks;

(2) Whether the transaction or activity is warranted only for financially strong and well-managed institutions, as such institutions are further defined in department regulations;

(3) Whether the transaction or activity is necessary to reduce the burden on financial institutions or other entities which the department regulates;

(4) Whether the transaction or activity will assist regulated entities in remaining competitive and responsive to both economic and consumer demands; and

(5) Whether the transaction or activity is consistent with the objectives of this Code section. (Code 1981, § 7-1-79, enacted by Ga. L. 1997, p. 485, § 9.)

#### PART 4

#### PROCEEDINGS INVOLVING THE DEPARTMENT OF BANKING AND FINANCE

#### **7-1-90. Judicial review of department actions.**

(a) Any final action of the department or refusal of the department to act may be subject to judicial review by any person or corporation affected by such action. Such action shall be brought within 60 days of the final action or refusal of action by the department as a special statutory proceeding in the county in which the affected person or corporation resides or is domiciled if within this state (which in the case of a corporation shall be the county of its registered office if it has such an office) or in Fulton County if the affected person or corporation resides or is domiciled outside of this state. The review shall be conducted by the court without a jury. The court shall not substitute its judgment for that of the department but may:

(1) Compel department action unlawfully withheld; or

(2) Hold unlawful and set aside department action found to be:

(A) In violation of constitutional or statutory provision;

(B) In excess of statutory authority;

(C) Made upon unlawful procedure; or

(D) Arbitrary, capricious, or otherwise in abuse of discretion,

provided that any action reviewable under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," or through the injunction procedure of Code Section 7-1-155 shall be reviewed under that chapter or Code section and not under this Code section.

(b) Appeals from all final orders and judgments entered by the superior court under this Code section may be taken to the Court of Appeals or the Supreme Court in the same manner as in other cases. (Code 1933, § 41A-401, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 9; Ga. L. 1981, p. 1366, § 3.)

### JUDICIAL DECISIONS

**Cited in** Commercial Bank v. Department of Banking & Fin., 244 Ga. 172, 259 S.E.2d 435 (1979); Department of Banking & Fin. v. Independent Ins. Agents of Ga., Inc., 158 Ga. App. 556, 281 S.E.2d 265 (1981).

### RESEARCH REFERENCES

**C.J.S.** — 73A C.J.S., Public Administrative Bodies and Procedure, § 174.

### 7-1-91. Orders by department; enforcement; civil penalty.

(a) Whenever it shall appear to the department that the capital stock of a financial institution has been reduced below the minimum required by law or below the amount required by its articles or that its net assets are less than the amount of its capital stock, the department may issue a written order directing such corporation to restore the deficiency within such period as shall be specified in the order.

(b) Whenever it shall appear to the department that any financial institution is not keeping its books and accounts in such manner as to enable the department, with reasonable facility, to ascertain the true condition of the financial institution, the department may issue a written order requiring such financial institution, within such period as shall be specified in the order, to open and keep such books as the department may, in its discretion, reasonably determine are essential for the purpose of keeping accurate and convenient records of the transactions and accounts of such financial institution.

(c) Whenever any financial institution shall refuse to submit its records and affairs to a legally conducted examination or investigation by the department, the department may issue a written order requiring such financial institution to permit the commissioner or other duly authorized examiner to make such examination or investigation, within such period as shall be specified in the order.

(d) Whenever it shall appear to the department that any financial institution has violated its articles or any law of this state or any order or

regulation of the department or that any financial institution is conducting business in an unsafe or unauthorized manner, the department may issue a written order requiring the financial institution to cease and desist from such unsafe and unauthorized practices.

(e) Whenever a financial institution shall fail to comply with the terms of an order of the department which has been properly issued under the circumstances, the department, upon notice of three days to the financial institution, may, through the Attorney General, petition the principal court for an order directing the financial institution to obey the order of the department within such period as shall be fixed by the court. Upon the filing of such petition, the court shall allow a rule to show cause why it should not be granted. Whenever, after a hearing upon the merits or after failure of the financial institution to appear when ordered, it shall appear that the order of the department was properly issued, the court shall grant the petition of the department.

(f) Any financial institution which violates the terms of any order issued pursuant to this Code section shall be liable for a civil penalty not to exceed \$1,000.00. Each day during which the violation continues shall constitute a separate offense. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of the institution, the good faith efforts of the financial institution to comply with the order, the gravity of the violation, the history of previous violations by the financial institution, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to imposition or has been imposed pursuant to this Code section. The financial institution or other person assessed as provided in this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the financial institution involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90.

(g) All penalties recovered by the department pursuant to this Code section shall be paid into the state treasury to the credit of the general fund; provided, however, that the department at its discretion may remit such amounts recovered, net of the cost of recovery, in the same manner as prescribed for judgments received through derivative actions pursuant to the provisions of Code Section 7-1-441.

(h) The term “financial institution” as used in this Code section shall include those entities required to be licensed pursuant to Article 4A of this chapter and any officer, director, employee, agent, or other person participating in the conduct of the affairs of the financial institution subject to the orders issued pursuant to this Code section. (Ga. L. 1919, p. 135, art. 5, § 1; Code 1933, § 13-601; Code 1933, § 41A-402, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 10; Ga. L. 1985, p. 258, § 2; Ga. L. 1998, p. 795, § 8.)



**Cross references.** — Issuance of subpoenas for production of books and papers pursuant to examinations and investigations of financial institutions, § 7-1-66.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1985, in subsection

(b) a comma was deleted following “written order” and in the third sentence of subsection (f) “institution” was substituted for “institutions” the last time that word appears.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 287.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 10-14, 27. 73A C.J.S., Public Administrative Bodies and Procedure, §§ 272-292.

**ALR.** — Bank’s duty to customer or depos-

itor not to disclose information as to his financial condition, 92 ALR2d 900.

Bank’s liability, under state law, for disclosing financial information concerning depositor or customer, 81 ALR4th 377.

### 7-1-92. Forfeiture proceedings.

(a) Articles of financial institutions existing under the laws of this state are subject to forfeiture:

(1) In the case of an institution subject to such requirements, for failure to file its annual report with the Secretary of State or its annual license or occupation tax return within the time required by law;

(2) For failure to maintain a registered office in this state as required by the provisions of Title 14, relating to corporations, or by Code Section 7-1-132;

(3) For having procured its articles through fraud;

(4) For failure to organize and proceed to do business within a period of 24 months from the date of the certificate of incorporation;

(5) For failure to obey a final court order issued pursuant to subsection (a) of Code Section 7-1-91 within the time specified in such order; or

(6) Where, because of violation of law or its articles or the unsafe condition or manner of operation of the financial institution, its continued existence is likely to injure the public or the institution’s creditors or depositors.

(b) Where such grounds exist, the department, through the Attorney General and in the name of the state, is authorized to institute quo warranto or other appropriate proceedings in the principal court to vacate and forfeit the articles of any financial institution.

(c) Where the articles of any financial institution shall be forfeited, the department shall, if it has not already done so, take charge of the business and assets of such institution and proceed to liquidate it in the same manner as is herein provided in cases where the department takes possession of a financial institution directly.



(d) No action to forfeit the articles of any financial institution shall be brought except as provided herein, but any person or corporation shall have the right to submit to the department any facts which under the law would authorize the forfeiture of the articles of a financial institution.

(e) On and after April 1, 1975, the provisions of Title 14, relating to forfeiture, shall not be applicable to financial institutions. (Ga. L. 1919, p. 135, art. 15, §§ 1-4; Ga. L. 1925, p. 165, § 10; Code 1933, §§ 13-1601, 13-1602, 13-1603, 13-1604, 25-122; Ga. L. 1935, p. 114, § 1; Ga. L. 1937-38, Ex. Sess., p. 307, § 7; Ga. L. 1943, p. 279, § 1; Ga. L. 1949, p. 442, § 1; Ga. L. 1956, p. 742, § 4; Ga. L. 1960, p. 977, § 1; Ga. L. 1962, p. 74, § 3; Ga. L. 1968, p. 465, § 8; Code 1933, § 41A-403, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 11.)

**Cross references.** — Declaration by Secretary of State of forfeiture of charter of Secretary of State corporations, § 14-4-160.

#### RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 166-171, 495.

#### 7-1-93. Injunction and other actions by department.

The department may bring an appropriate civil action to enforce any provision of this chapter or regulations issued hereunder, whether by injunction or otherwise, in the superior court of this state having jurisdiction over one or more of the defendants. (Code 1933, § 13-208, enacted by Ga. L. 1960, p. 67, § 7; Ga. L. 1970, p. 954, § 6; Code 1933, § 41A-404, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**C.J.S.** — 73A C.J.S., Public Administrative Bodies and Procedure, § 272.

#### 7-1-94. Evidential value of results of examinations or investigations.

(a) The record of any examination or investigation of a financial institution by the department or the report by the examiner or employee of the department who conducted such examination or investigation or a copy of either, when duly certified by the department, shall, in the absence of any applicable privilege, be admissible and constitute prima-facie evidence of facts therein stated, but not of conclusions drawn by the examiner from such facts, in any action at law or equity in which one of the parties is the department or any officer or employee thereof, either in his official capacity or otherwise, or the financial institution subjected to examination or investigation.

(b) The department, with the permission of the court, may edit out of any report to be admitted as evidence pursuant to subsection (a) of this Code section any portion of the report which is not pertinent to the issue in question before the court or which would tend unnecessarily to affect adversely the public confidence in the financial institution. (Ga. L. 1919, p. 135, art. 2, § 20; Ga. L. 1919, p. 135, art. 3, § 10; Ga. L. 1920, p. 102, § 1; Code 1933, §§ 13-320, 13-410; Ga. L. 1966, p. 692, § 27; Code 1933, § 41A-405, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 12.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 108.

11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1217 and 1219.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 10-14.

#### 7-1-95. Admissibility of department's certificates and copies.

When duly certified by the department, a copy of any book, paper, or document on file with it or a certificate under its seal shall be prima-facie evidence of the facts therein stated in any court of law or equity or in any investigation or proceeding authorized by law or for any other purpose and shall be admissible without any additional authentication; but in any proceeding the court or public body having jurisdiction may, on cause shown, require production of the original. (Code 1933, § 41A-406, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**C.J.S.** — 32 C.J.S., Evidence, §§ 663-665.

#### 7-1-96. Liability on bonds for nonperformance of duty.

The commissioner, the deputy commissioner, and the examiners shall be liable on their official bonds to any person or corporation injured on account of the failure of the commissioner, the deputy commissioner, or any examiner to discharge faithfully the duties of his office. An action may be brought thereon in any court of competent jurisdiction in the name of the state for the benefit of the injured party. (Ga. L. 1919, p. 135, art. 2, § 21; Code 1933, § 13-321; Code 1933, § 41A-407, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 2 Am. Jur. 2d, Administrative Law, §§ 648-652, 655, 656.

**C.J.S.** — 73 C.J.S., Public Administrative Bodies and Procedure, § 15.

**ALR.** — Personal liability of members of governmental banking department or their sureties, 90 ALR 1423.

**7-1-97. Costs of actions by or against department.**

The costs of any actions or proceedings by or against the department shall be taxed by the judge of the superior court in which such action is brought either against the opposite party to such action, or against the financial institution concerning which the action is brought, or against the department, in which latter event such costs shall be paid as other expenses of the department are paid. (Ga. L. 1919, p. 135, art. 2, § 22; Ga. L. 1931, p. 7, § 91; Code 1933, § 13-322; Code 1933, § 41A-408, enacted by Ga. L. 1974, p. 705, § 1.)

**RESEARCH REFERENCES**

**C.J.S.** — 73A C.J.S., Public Administrative Bodies and Procedure, §§ 270, 292.

**7-1-98. Department of Law to advise department.**

It shall be the duty of the Department of Law to advise the department on any question of law submitted by it. (Ga. L. 1919, p. 135, art. 2, § 23; Ga. L. 1931, p. 7, § 91; Code 1933, § 13-323; Code 1933, § 41A-409, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-99. Duties and responsibilities of department regarding interest and usury complaints; advisory opinions; effect.**

(a) Except as provided in Chapter 3 of this title, as amended, and Chapter 22 of Title 33, as amended, the department is designated as the appropriate agency of this state to receive and investigate complaints or allegations regarding violations of the interest and usury laws of this state. In processing such matters, the department may refer complaints or allegations to other state or federal officials or agencies which have jurisdiction over the lender involved for investigation or other action.

(b) (1) The department, in consultation with the Department of Law, may render and publish advisory opinions for the assistance and guidance of financial institutions as defined in this chapter.

(2) Reliance in good faith upon an opinion issued as provided in paragraph (1) of this subsection shall constitute prima-facie evidence of good faith on the part of any person charged with any violation, resulting from the reliance, which subjects him to forfeiture or other sanctions imposed by the interest and usury laws. The provisions of this paragraph shall apply even if, following the reliance, the opinion is amended, rescinded, or determined by any judicial or other authority to be invalid. (Code 1933, § 41A-411, enacted by Ga. L. 1979, p. 951, § 1; Ga. L. 1989, p. 14, § 7.)



**Law reviews.** — For article surveying 1979 legislative developments in commercial law, see 31 Mercer L. Rev. 13 (1979).

#### RESEARCH REFERENCES

**ALR.** — Usury in connection with loan calling for variable interest rate, 18 ALR4th 1068.  
 of statutes relating to inspection, dissolution and liquidation of building and loan associations, 78 ALR 1090.  
 Constitutionality, construction, and effect

#### PART 5

#### PERMISSIVE CLOSING DAYS, EMERGENCY CLOSINGS, BUSINESS RESTRICTIONS, AND VOLUNTARY LIQUIDATIONS

**Cross references.** — Taking of possession of the business and property of financial institutions by department, § 7-1-150 et seq. Dissolution of business corporations generally, § 14-2-1401 et seq. Forfeiture of charter and dissolution of Secretary of State corporations generally, § 14-4-160 et seq.

#### 7-1-110. Permissive closing days; deferral of business conducted on Saturday.

Any financial institution may remain closed one day each week in addition to Sundays and other legal holidays; and any act authorized, required, or permitted to be performed at or by any such financial institution on a day when it is closed may be performed on the next succeeding business day; and no liability or loss of rights of any kind shall result from the delay. Saturday shall not be construed to be a business day and any business conducted on Saturday may be deferred to the next succeeding business day, provided such deferral is applicable to all business conducted by said financial institution on that day and is in accordance with a resolution adopted by the board of directors of the institution. Customers of any financial institution adopting such a deferral policy shall be notified of any such deferral of business by prominent notice posted in the lobby of the financial institution and by circularization in regular statement mailings at least 30 days prior to the effective date of any such deferral policy. Any financial institution changing its permissive closing day, temporarily or otherwise, shall post a notice of the change and the effective date thereof in a conspicuous place at each location affected by the change at least 30 days preceding the date of the change. Notwithstanding the foregoing, credit unions serving a limited membership base may establish uniform business hours and days consistent with the needs of their membership. (Code 1933, § 41A-501, enacted by Ga. L. 1978, p. 1714, § 2; Ga. L. 1983, p. 602, § 2.)



## RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking,  
§ 232.

**7-1-110.1. Posting notice of intent to close banking location.**

Except in the case of an emergency closing, before a financial institution may close a banking location, it must post at such location in a conspicuous place at least 30 days in advance of such closing a notice of intent to close. Such notice must remain posted for at least 30 consecutive days. Customers of a banking location shall be considered to have received notice if the requirements of this Code section have been met. (Code 1981, § 7-1-110.1, enacted by Ga. L. 1999, p. 674, § 1.)

**7-1-111. Emergency closings.**

Whenever it appears to the Governor that the welfare of the state or any region thereof or the welfare and security of any financial institution or the lives of the employees of the financial institution or the safety of the funds of depositors and property of the shareholders are endangered or placed in jeopardy by any impending or existing emergency or other catastrophe, including, but not limited to, economic crises, hurricanes, tornadoes, fire hazards, disruption or failure of utility, transportation, communication, or information systems, or civil disorders, the Governor may proclaim that a financial emergency exists and that any financial institution or type of financial institution shall be subject to special regulation as herein provided until the Governor, by a like proclamation, declares the period of such emergency to have terminated. The department may also declare financial emergencies in specific cases for cause shown, and its declaration shall remain in effect until terminated by the Governor or the commissioner, whichever occurs first. (Code 1933, § 14-1811, enacted by Ga. L. 1971, p. 812, § 1; Code 1933, § 41A-501, enacted by Ga. L. 1974, p. 705, § 1; Code 1933, § 41A-502, enacted by Ga. L. 1978, p. 1714, § 4; Ga. L. 1999, p. 674, § 1.)

## RESEARCH REFERENCES

**ALR.** — Statute relating to closing of bank and assessment of stockholders as subject to constitutional objection of conferring judicial power upon administrative or executive officers, 78 ALR 774.

Legal questions presented by the reopen-

ing of closed bank, 80 ALR 1487; 99 ALR 1217.

Legal aspects and consequences of declaration of "bank holiday," 86 ALR 1138; 95 ALR 934.

**7-1-111.1. Posting notice of intent to close banking location.**

Repealed by Ga. L. 1999, p. 674, § 1, effective July 1, 1999.

**Editor's notes.** — This Code section was based on Code 1981, § 7-1-111.1, enacted by Ga. L. 1998, p. 795, § 9. For present comparable provisions, see Code Section 7-1-110.1.

### **7-1-112. Business restrictions.**

(a) During the period of or as a result of any financial emergency proclaimed by the Governor or declared by the department, or during any impending or existing emergency situation as described in Code Section 7-1-111, the department, in addition to all of the powers conferred upon it by law, shall have the authority to order any one or more financial institutions to restrict all or any part of their business and to limit or postpone for any length of time the payment of any amount or proportion of the deposits in any of the departments of the financial institutions as it may deem necessary or expedient. The department may further regulate the payments of such financial institutions as to time and amount, as in its opinion the interest of the public or of such financial institutions or the depositors thereof may require.

(b) No liability or loss of any rights of any kind shall be incurred by any financial institution during any emergency period declared by the Governor or the department by reason of the delay in the payment of any item or by the return or transmission of any item or document if such delay is caused by orders of the Governor or the department, interruption of communication facilities, suspension of payments by another financial institution, war or emergency conditions, or other circumstances beyond the control of the financial institution if it exercises such diligence as the circumstances require. (Code 1933, § 14-1812, enacted by Ga. L. 1971, p. 812, § 2; Code 1933, § 41A-501, enacted by Ga. L. 1974, p. 705, § 1; Code 1933, § 41A-503, enacted by Ga. L. 1978, p. 1714, § 5; Ga. L. 1999, p. 674, § 2.)

### **RESEARCH REFERENCES**

**C.J.S.** — 9 C.J.S., Banks and Banking, § 128.

### **7-1-113. Voluntary dissolution prior to commencement of business.**

(a) A financial institution which has not transacted any business as a financial institution other than organizational business may propose to dissolve by the affirmative vote of shareholders entitled to cast at least two-thirds of the votes which all shareholders are entitled to cast on the plan and by delivering to the department articles of dissolution which shall be executed by two duly authorized officers or shareholders under the seal of the financial institution and which shall contain:

- (1) The date of incorporation of the financial institution;

(2) A statement that it has not transacted any business as a financial institution other than organizational business;

(3) A statement that all liabilities of the financial institution have been paid or provided for;

(4) A statement that all amounts received on account of capital stock, paid-in capital, and expense fund, less amounts disbursed for expenses, have been returned to the persons entitled thereto; and

(5) The number of shares entitled to vote on the dissolution and the number of shares voted for and against it, respectively.

(b) The articles of dissolution shall be delivered in duplicate to the department together with the filing fee required by Code Section 7-1-862. If the department is satisfied that the financial institution has not conducted any business other than organizational business and, if it finds that the articles of dissolution satisfy the requirements of this chapter, it shall deliver them with its written approval to the Secretary of State and notify the financial institution of its action. If the department shall disapprove the articles of dissolution, it shall give written notice to the financial institution of its disapproval and a general statement of the reasons for its decision. The decision of the department shall be conclusive, except as it may be subject to judicial review under Code Section 7-1-90. (Code 1933, § 41A-502, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 13; Code 1933, § 41A-504, as redesignated by Ga. L. 1978, p. 1714, § 3; Ga. L. 1993, p. 917, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 207 et seq..

11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1039, 1207.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 566-569.

#### **7-1-114. Voluntary dissolution after commencement of business.**

(a) A financial institution which has commenced business may elect to dissolve voluntarily upon:

(1) Adoption by the vote required of its shareholders under subsection (b) of this Code section of:

(A) A plan of dissolution involving both a provision for assumption of its liabilities by another financial institution and a provision for continuance of its business if such assumption of its liabilities is not effected; or

(B) Any other plan of dissolution providing for full payment of its liabilities; and



(2) Approval by the department of the plan of dissolution after application for approval thereof in a manner prescribed by the department.

(b) Adoption of the plan by the shareholders of the financial institution shall require the affirmative vote of the shareholders entitled to cast at least two-thirds of the votes which all shareholders are entitled to cast on the plan and, if any class of shareholders is entitled to vote on the plan as a class, of the holders of at least two-thirds of the outstanding shares of such class, provided, in the case of a credit union, adoption of the plan may be made by the affirmative vote of at least two-thirds of the members present and entitled to vote at a meeting duly called for that purpose.

(c) Upon receipt of an application for approval of a plan of dissolution, the department shall conduct such investigation as it may deem necessary to determine whether:

(1) The plan satisfies the requirements of this chapter;

(2) The plan adequately protects the interests of depositors, other creditors, and shareholders; and

(3) If the plan involves an assumption of liabilities by another financial institution, such assumption would be consistent with adequate and sound banking and in the public interest on the basis of factors substantially similar to those set forth in Code Section 7-1-534.

(d) Within 90 days after receipt of the application, the department shall approve or disapprove the application on the basis of its investigation and shall immediately give to the financial institution written notice of its decision and, in the event of disapproval, a general statement of the reasons for its decision. The decision of the department shall be conclusive, except as it may be subject to judicial review under Code Section 7-1-90. (Ga. L. 1919, p. 135, art. 14, §§ 1, 2, 10; Code 1933, §§ 13-1501, 13-1502, 13-1510; Ga. L. 1967, p. 597, § 1; Code 1933, § 41A-503, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1977, p. 730, § 2; Code 1933, § 41A-505, as redesignated by Ga. L. 1978, p. 1714, § 3.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 207 et seq.

11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1039, 1207.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 566-569.

**ALR.** — Trust or preference in respect of money placed in bank for purpose of transaction with third person where bank subse-

quently becomes insolvent, 31 ALR 472; 93 ALR 881.

Right of creditors or stockholders of insolvent bank in charge of liquidating officer who refuses or fails to enforce liability of third persons to bank, to maintain action for that purpose, and conditions of such right, 116 ALR 783.



**7-1-115. Winding up voluntary dissolution proceedings.**

(a) The board of directors shall have full power to wind up and settle the affairs of a financial institution in voluntary dissolution proceedings.

(b) Within 30 days after the department's approval of voluntary liquidation and dissolution, the financial institution shall give notice of its dissolution:

(1) By mail to each depositor and creditor (except those as to whom the liability of the financial institution has been assumed by another financial institution pursuant to the plan), including a statement of the amount shown by the books of the financial institution to be due to such depositor or creditor and a demand that any claim for a greater amount be filed with the financial institution before a specified date at least 60 days after the date of notice;

(2) By mail to each lessee of a safe-deposit box and each customer for whom property is held in safe deposit (except those as to whom the liability of the financial institution has been assumed by another financial institution pursuant to the plan), including a demand that all property held in a safe-deposit box or held in safe deposit by the financial institution be withdrawn by the person entitled thereto before a specified date at least 60 days after the date of the notice;

(3) By mail to each person interested in funds held in a fiduciary account or other representative capacity;

(4) By a conspicuous posting at each office of the financial institution; and

(5) By such publication as the department may prescribe.

(c) As soon as feasible after the department's approval of voluntary liquidation and dissolution, the financial institution shall resign all of its fiduciary appointments and take such action as may be necessary to settle its fiduciary accounts.

(d) Except where liabilities are to be assumed by another financial institution:

(1) All claims of depositors and creditors shall be paid promptly after the date specified in the notice given under paragraph (1) of subsection (b) of this Code section, and unearned portions of rentals for safe-deposit boxes shall be rebated to the lessee thereof;

(2) Safe-deposit boxes whose contents have not been removed after the date specified in the notice given under paragraph (2) of subsection (b) of this Code section shall be opened under the supervision of the department and the contents placed in sealed packages which, together with unclaimed property held by the financial institution in safe deposit,

shall be transmitted to the department to be held by it subject to Article 5 of Chapter 12 of Title 44, provided that the department while holding such property may take such actions as it deems appropriate to protect the interests of the owner including reducing such property to cash;

(3) After payment of amounts due to all known depositors and creditors, unclaimed amounts due to depositors and creditors shall be paid through the department and held by it subject to Article 5 of Chapter 12 of Title 44; and

(4) Assets remaining after the performance of all obligations of the financial institution under this subsection and subsection (c) of this Code section shall be distributed to its shareholders according to their respective rights and preferences. Partial distributions to shareholders may be made prior to such time only if and to the extent approved by the department.

(e) During the course of dissolution proceedings, the financial institution shall make such reports as the department may require and shall continue to be subject to the provisions of this chapter concerning examinations and investigations of financial institutions. Furthermore, during the course of a voluntary dissolution, the financial institution with the written permission of the department may elect to use provisions of Article 14 of Chapter 2 of Title 14 that are not in conflict with this chapter.

(f) If, at any time during the course of dissolution proceedings, the department finds that the assets of the financial institution will not be sufficient to discharge its obligations, the department may then or at any time thereafter take possession of the business and property of the financial institution and complete the dissolution in accordance with this chapter. (Ga. L. 1919, p. 135, art. 14, §§ 3-6; Code 1933, §§ 13-1504, 13-1505, 13-1506; Ga. L. 1967, p. 597, § 1; Code 1933, § 41A-504, enacted by Ga. L. 1974, p. 705, § 1; Code 1933, § 41A-506, as redesignated by Ga. L. 1978, p. 1714, § 3; Ga. L. 1989, p. 14, § 7; Ga. L. 2003, p. 843, § 3.)

**The 2003 amendment**, effective July 1, 2003, in subsection (e), deleted “the financial institution” preceding “shall continue”

in the first sentence, and added the second sentence.

#### OPINIONS OF THE ATTORNEY GENERAL

**Disposition of proceeds of accounts not claimed during voluntary liquidation.** — Proceeds of accounts not claimed during voluntary liquidation of financial institution pursuant to former Code 1933, § 41A-506 (see

O.C.G.A. § 7-1-115) pass to custody of Department of Banking and Finance for ultimate disbursement pursuant to Disposition Unclaimed Property Act. 1975 Op. Att’y Gen. No. 75-135.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 207 et seq.

11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1039, 1207.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 163, 164.

**ALR.** — Right of creditors or stockholders of insolvent bank in charge of liquidating

officer who refuses or fails to enforce liability of third persons to bank, to maintain action for that purpose, and conditions of such right, 116 ALR 783.

Bank's or safe deposit company's liability for denying access to box, 4 ALR3d 1462.

## **7-1-116. Articles of dissolution where business commenced; procedure if not filed.**

(a) When all the liabilities of the financial institution have been discharged and all of its remaining assets have been distributed to its shareholders pursuant to Code Section 7-1-115 or its liabilities have been assumed by another financial institution, the articles of dissolution shall be signed by two duly authorized officers of the financial institution under its seal and shall contain:

(1) The name of the financial institution and the post office address of its principal place of business;

(2) A statement that the department has previously approved a plan to dissolve the institution and the date on which such approval was transmitted to the Secretary of State;

(3) A statement that all liabilities of the financial institution have been discharged and that the remaining assets of the financial institution have been distributed to its shareholders or that its liabilities have been assumed as provided in this chapter; and

(4) A statement that there are no actions pending against the financial institution.

(b) The articles of dissolution shall be delivered to the department in duplicate together with the filing fee required by Code Section 7-1-862. If the department finds that the articles satisfy the requirements of this chapter, it shall deliver its written approval to the Secretary of State with a copy of the articles of dissolution attached.

(c) Where a financial institution fails to file articles of dissolution within 180 days after the department determines that dissolution proceedings have been completed as provided in this part, the department may cause notice to be published in accordance with this chapter to the effect that persons having claims against the financial institution should notify the department within 30 days of the date of initial publication. If the department receives no such notifications or if claims are otherwise satisfied, the department shall notify the Secretary of State that the articles of incorporation or



charter are no longer valid and should be promptly canceled of record in the offices of the Secretary of State. (Ga. L. 1919, p. 135, art. 14, §§ 7, 9; Code 1933, §§ 13-1507, 13-1509; Ga. L. 1967, p. 597, § 1; Code 1933, § 41A-505, enacted by Ga. L. 1974, p. 705, § 1; Code 1933, § 41A-507, as redesignated by Ga. L. 1978, p. 1714, § 3; Ga. L. 1980, p. 972, § 3; Ga. L. 1993, p. 917, § 2.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 207 et seq.

11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1039, 1207.

#### 7-1-117. Certificate of dissolution.

If all applicable fees, charges, and taxes required by law have been paid upon the receipt of the department's approval, under Code Section 7-1-113 or 7-1-116, of the articles of dissolution, the Secretary of State shall immediately issue to the financial institution a certificate of dissolution with the approved articles of dissolution attached thereto and shall retain a copy of such certificate, the approval of the department, and the articles; and the existence of the financial institution shall cease. (Ga. L. 1919, p. 135, art. 14, § 12; Code 1933, § 13-1512; Ga. L. 1967, p. 597, § 1; Code 1933, § 41A-506, enacted by Ga. L. 1974, p. 705, § 1; Code 1933, § 41A-508, as redesignated by Ga. L. 1978, p. 1714, § 3.)

### PART 6

#### NAMES, REGISTERED OFFICES, AND ADVERTISING

#### RESEARCH REFERENCES

**ALR.** — Duty of depositor to report loss or theft of unsigned check, 26 ALR 613.

#### 7-1-130. Permissible names.

(a) The name of a financial institution shall not contain the words "Government," "Official," "Federal," "National," or "United States" or any abbreviation of any such words and shall not in the opinion of the department:

(1) Be indistinguishable from the corporate name of another financial institution conducting a banking business in this state as reflected in the records of the department; or

(2) Contain any word which may lead to the conclusion that the financial institution is authorized to perform any act or conduct any business which it is unauthorized or forbidden to perform by law, its articles, or otherwise.



(b) A financial institution may, without regard to subsection (a) of this Code section, use:

- (1) Its name in use on April 1, 1975;
- (2) A name in use on April 1, 1975, by another financial institution which is adopted by:
  - (A) A financial institution which is the resulting institution in a plan of merger or consolidation to which the institution using the name is a party; or
  - (B) A financial institution which is incorporated under this chapter in pursuance of a plan of segregating the banking business and the trust business of the institution using the name; or
- (3) A name of another financial institution already transacting business with the consent of the latter institution, provided that the names are distinguishable in the records of the Secretary of State. (Code 1933, § 41A-601, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1998, p. 795, § 10.)

**Cross references.** — Further restrictions on use of names by banks and trust companies, § 7-1-243. Restriction on use of terms “savings and loan,” “building and loan,” etc., § 7-1-779. Permissible corporate names generally, § 14-2-401. Use of corporate names by Secretary of State corporations, §§ 14-4-22, 14-4-25.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 182.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 42, 496.

#### 7-1-131. Reservation of name.

(a) The exclusive right to use a corporate name permitted to be used by a financial institution may be reserved by a person intending to incorporate such an institution, by a corporation intending to engage in business in this state as a financial institution, by a financial institution intending to change its name, or by a national bank, a federal credit union, or a savings and loan association intending to convert into a financial institution organized under the laws of this state.

(b) Such reservation may be made by filing with the department a letter form application to reserve a specified name. If the department concludes that the use of the name complies with the requirements of Code Section 7-1-130, is otherwise consistent with the purposes and provisions of this chapter, and is distinguishable upon the records of the Secretary of State from the name of any other corporation, limited partnership, or professional association, it shall approve the name and notify the Secretary of State to issue such name reservation.

(c) The right to the exclusive use of a name reserved pursuant to this Code section may be transferred to anyone who would be entitled to reserve

such name under this Code section except for such prior reservation by filing with the department a notice of the transfer which shall be executed by the transferor who reserved the name and which shall set forth the name and address of the transferee. The department shall send a copy of such notice to the Secretary of State.

(d) Notwithstanding any other provisions of law, the process set forth in this Code section shall be the exclusive process for reserving the corporate name of a financial institution. (Code 1933, § 41A-602, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 14; Ga. L. 1978, p. 1717, § 2; Ga. L. 1989, p. 1257, § 1; Ga. L. 1998, p. 795, § 11.)

**Cross references.** — Use of corporate names by Secretary of State corporations, §§ 14-4-22, 14-4-25.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 182.

#### **7-1-132. Registered agent and office.**

(a) Every financial institution shall continuously maintain a registered agent and a registered office. Such agent and office shall be located in a county in this state where the financial institution is authorized to conduct its general business; and, in the case of financial institutions subject to Chapter 2 or 3 of Title 14, such agent and office shall be the same as is required under those chapters.

(b) Not later than September 30, 1998, every financial institution shall file with the department a statement designating the name of its registered agent and the place of its registered office by street, post office address, and county. In the event of the failure of an institution to file said statement, the registered agent shall be the chief executive officer of the bank and the registered office of the institution shall be the business address where the chief executive officer is located.

(c) A financial institution may change, and a new financial institution may establish, its registered agent and the location of its registered office by filing a statement with the department designating the name of the new registered agent or the street, post office address, and county of its new registered office or both, provided that no change in the registered agent or office shall affect actions or proceedings commenced before the time of said change.

(d) Nothing contained in this Code section shall affect the obligation of a financial institution to file information with the Secretary of State. (Code 1933, § 41A-603, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1998, p. 795, § 12.)

**Cross references.** — Maintenance of office in state by international bank agency not transacting a banking business in state, § 7-1-721.

### 7-1-133. Prohibited advertising.

(a) No person or corporation doing business in this state shall advertise in or through any newspaper, radio, television, letters, circulars, billheads, or in any way or through any medium seeking to induce any person to purchase an instrument which is purported to be insured or guaranteed in a manner comparable to an insured deposit or share account in any financial institution authorized to have such deposits or accounts when in fact such instrument does not possess comparable insurance coverage as determined by the department. Whenever any person, firm, or corporation doing business in this state shall compare, in any such advertising media, an investment or a return on an investment, except an investment or return on an investment in the form of a deposit or share account, to a deposit or share account or a return on a deposit or share account in an authorized financial institution, it shall be clearly stated in such advertising or solicitation that the investment is not a deposit insured by a public body of the United States or of this state.

(b) No person or corporation shall use the terms “savings,” “savings account,” “deposit,” or “withdrawal” or any equivalent thereof in any advertisement as above described in subsection (a) of this Code section indicating reference to instruments issued by or to be issued by the person or corporation. (Code 1933, § 13-204.2, enacted by Ga. L. 1973, p. 534, § 1; Code 1933, § 41A-604, enacted by Ga. L. 1974, p. 705, § 1.)

**Cross references.** — Duty of bank to post notice if deposit insurance maintained by bank is less than amounts insured by Federal Deposit Insurance Corporation, § 7-1-244. False advertising generally, § 10-1-420 et seq.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 71, 106, 111, 422, 423.

### 7-1-134. Unfair competition, unfair trade practice, and trade name and trademark laws unaffected.

Nothing in this chapter shall abrogate or limit the law as to unfair competition or unfair trade practice nor derogate from the common law or principles of equity or the statutes of this state or of the United States with respect to the right to acquire and protect trade names and trademarks. (Code 1933, § 41A-605, enacted by Ga. L. 1974, p. 705, § 1.)

**Cross references.** — Deceptive or unfair trade practices generally, § 10-1-370 et seq.



## PART 7

## RECEIVERSHIP POWERS AND PROCEDURES GENERALLY

## RESEARCH REFERENCES

**ALR.** — Trust or preference in respect of money placed in bank for purpose of transaction with third person where bank subsequently becomes insolvent, 32 ALR 472; 93 ALR 881.

Right of savings bank to liquidate voluntarily and close business, 69 ALR 1255.

Time when suit may be brought on bond

of officer taking charge of insolvent bank, 85 ALR 964.

Balance due other banks on clearing house settlement as preferred claim against insolvent bank, 44 ALR 1535.

When bank deemed insolvent, or “hopelessly” insolvent, in civil cases, 85 ALR 811.

Bank conservators, 107 ALR 1431.

**7-1-150. Taking of possession by department; cumulative remedies.**

(a) The department may in its discretion take possession of the business and property of any financial institution whenever such financial institution:

(1) Is insolvent or in an unsafe or unsound condition to transact its business;

(2) Has generally suspended payment of its obligations, without authority of law;

(3) Has violated any court order, statute, rule, or regulation, or its articles and the department determines that its continued control of its own affairs threatens injury to the public, the financial community, or its depositors and other creditors; or

(4) Requests the department, by its board of directors, to take possession for the benefit of depositors, other creditors, and shareholders.

(b) The right of the department to take possession of a financial institution shall be in addition to and cumulative with all other rights, remedies, and powers of the department. The department may, in its discretion before or after taking possession, petition the principal court for appointment of a receiver pursuant to subsection (c) of Code Section 7-1-151. (Ga. L. 1919, p. 135, art. 7, § 1; Ga. L. 1925, p. 165, § 10; Code 1933, §§ 13-801, 13-802, 25-122; Ga. L. 1935, p. 114, § 1; Ga. L. 1937-38, Ex. Sess., p. 307, § 7; Ga. L. 1943, p. 279, § 1; Ga. L. 1956, p. 742, § 4; Ga. L. 1960, p. 977, § 1; Ga. L. 1962, p. 74, § 3; Ga. L. 1967, p. 597, § 2; Ga. L. 1968, p. 465, § 8; Code 1933, § 41A-701, enacted by Ga. L. 1974, p. 705, § 1.)



## JUDICIAL DECISIONS

**Exercises of discretion not interfered with absent gross abuse.** — Under banking laws of this state, the superintendent of banks (now commissioner of banking and finance), is vested with broad discretion in supervision of banks and in determining when a particular bank should be closed for purpose of liquidation; the superintendent's discretion in such matters will not be interfered with by the court, unless it has been exercised arbitrarily or capriciously and thus grossly abused. *McGinty v. Gormley*, 181 Ga. 644, 183 S.E. 804 (1935).

**Injunctive relief to enjoin interference with department's possession.** — Court of equity will enjoin any unauthorized interference with possession of superintendent of banks (now department of banking and finance) of assets of insolvent bank. Especially will injunction in such case lie when plaintiff also contests justness of laborers' liens sought to be enforced against grantor in security deed and property therein conveyed. *Bennett v. Green*, 156 Ga. 572, 119 S.E. 620 (1923).

## RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 131, 132.

**ALR.** — Balance due other banks on clearing house settlement as preferred claim against insolvent bank, 44 ALR 1535.

When bank deemed insolvent, or "hopelessly" insolvent, in civil cases, 85 ALR 811.

Bank conservators, 107 ALR 1431.

**7-1-151. Status of department as receiver; restrictions on appointment.**

(a) Upon taking possession of a financial institution, the department shall automatically become the receiver of said institution with all rights, powers, and duties conferred by this chapter and, to the extent not in conflict with this chapter, all rights, powers, and duties of a receiver appointed pursuant to Chapters 5 and 8 of Title 9, relating to injunctions and receivers.

(b) Except as provided in subsection (c) of this Code section, no court shall appoint anyone but the department as receiver of a financial institution. Whenever any court, at the instance of the department, a depositor, a shareholder, or other person entitled by law to institute such proceedings, shall determine that a receiver should be appointed, for any reason whatsoever, it shall appoint the department as such receiver. When thus appointed receiver by a court, the department shall serve in the same manner and with the same limitations and shall have the same rights, powers, and duties as when it becomes receiver by operation of law and without appointment by any court. No court shall impose upon the department as receiver any duties or restrictions in conflict with this chapter.

(c) In any proceeding for the appointment of a receiver of an institution whose deposits or shares are insured by a public body of the United States, the court may upon the recommendation of the department (whether or not the department is a party) appoint said public body or its administrator as receiver. If said public body or its administrator accepts the appointment,

it or he shall have all the rights, powers, and duties of the department as receiver under this chapter and other applicable law. The public body or its administrator may act as receiver without bond. (Code 1933, § 41A-702, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, § 1048 et seq.

**ALR.** — Bank conservators, 107 ALR 1431.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 135.

#### **7-1-152. General assignment prohibited; taking of possession upon request.**

No financial institution shall make a general assignment of its business and property for the benefit of its creditors by the appointment of an assignee or a trustee or otherwise. In lieu of the power to make an assignment for the benefit of creditors, a financial institution may request the department to take possession as provided in this part. In such cases, the department shall take possession and become receiver in the same manner and subject to the same provisions of this chapter as when it takes possession of the business and property of a financial institution without the request of such financial institution. (Ga. L. 1919, p. 135, art. 7, §§ 2, 4; Code 1933, § 13-804; Code 1933, § 41A-703, enacted by Ga. L. 1974, p. 705, § 1.)

#### **7-1-153. Posting of notice of taking possession.**

The department, upon taking possession of the business and property of a financial institution as receiver, shall post notice of such fact on the front door of all offices of the institution open to the public for the transaction of business in person. (Code 1933, § 41A-704, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking, § 133.

#### **7-1-154. Certificate of possession; naming deputy receiver.**

The department shall immediately after taking possession file with the principal court a certificate to be known as the certificate of possession, setting forth the facts on the basis of which it has taken possession. The certificate shall state the name of the deputy receiver, if any, whom the department, pursuant to this chapter, appoints to take charge of the affairs of the financial institution, together with the duties of such deputy receiver. If the department does not appoint a deputy receiver prior to the date of the filing of the certificate of possession or if it appoints a new deputy

receiver or an additional one or if it adds to the duties of the deputy receiver, it shall file a supplement to the certificate of possession setting forth such acts. The certificate of possession and any supplement thereto shall be listed in the judgment index in the name of the financial institution as defendant and of the department as plaintiff. (Ga. L. 1919, p. 135, art. 7, § 5; Ga. L. 1927, p. 195, § 2; Code 1933, § 13-805; Code 1933, § 41A-705, enacted by Ga. L. 1974, p. 705, § 1.)

#### **7-1-155. Injunction to restrain department.**

Any financial institution of whose business or property the department has taken possession as receiver may, at any time within ten days after the department has become receiver, apply to the principal court for an order requiring the department to show cause why it should not be enjoined from continuing as receiver. Service may be made in such action by serving the commissioner personally or by leaving a copy with the deputy in charge of his office in the department or by serving the deputy receiver appointed by the department to manage the affairs of such financial institution. The court shall, after a hearing upon the merits, either dismiss the application or order the department to surrender to the financial institution possession of its business and property; but no such injunction shall issue where the department has been appointed receiver by action of a court of competent jurisdiction or by action of the financial institution itself, in accordance with this chapter. Such application for injunction may in the discretion of the court be heard at any time after service as provided in this Code section, with the right to either party by appeal, as in other cases of applications for temporary injunction, to carry said case to the Supreme Court for review. (Ga. L. 1919, p. 135, art. 7, § 8; Code 1933, § 13-810; Code 1933, § 41A-706, enacted by Ga. L. 1974, p. 705, § 1.)

#### **7-1-156. Supervision of department by court.**

(a) Except as otherwise provided in this chapter, the department, when it has taken possession of a financial institution, shall be responsible to the principal court and not to any other court. All actions against the department or any official of it involving a financial institution which is or has been in the department's possession shall be brought in the principal court.

(b) The principal court shall sit as a court of equity. It shall have the power, upon petition of the department, to make and enforce any appropriate order to enable the department, with the utmost dispatch, to discharge its duties in connection with the business and property of any financial institution of which it has taken possession.

(c) The court shall grant to any party against whom an order is sought the right to appear, within ten days after notice is given, to show cause why



the order should not be made. The court shall have the power, at the end of the ten-day period, ex parte if the other party does not appear to show cause, or upon the merits if the party does appear, to issue the aforementioned order.

(d) Whenever this chapter empowers the department as receiver to take any action with the leave of court, the department shall give the financial institution and its creditors, depositors, and shareholders ten days' notice of its proposed action before seeking the approval of the court, provided that the court may, upon cause shown, shorten the time or dispense with such notice or direct that it be sent to only specified parties. In determining what, if any, notice shall be provided, the court may consider, among other factors, the necessity for immediate action in the interest of the financial institution as a whole and whether the interests of potential addressees are actually at stake. Where parties object to the proposed action of the department, the court shall allow them an opportunity to present their views appropriate to the nature of the case. (Ga. L. 1927, p. 195, § 15-A; Code 1933, § 13-809; Code 1933, § 41A-707, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 15.)

#### RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking,  
§ 133.

#### **7-1-157. General powers of department in possession.**

(a) The department in possession shall be vested with all the rights, powers, and duties of such financial institution; with the title or the right to possession of all property to which the financial institution has title or the right to possession, including debts due, and liens and other security therefor; and with the financial institution's rights of action or redemption. This shall be so whether such property and debts due, such liens or other security therefor, or such rights of action or redemption are held in the name of such financial institution or in the name of some other corporation or person.

(b) The department shall be the representative of the creditors of the financial institution and shall be entitled, as such, to have vacated and set aside, for the benefit of the creditors, any judgment, execution, attachment, sequestration, payment, security interest, assignment, transfer, conveyance, or encumbrance which could have been avoided by any of the creditors or by which one creditor is given a preference over another. As used in this subsection, the term "preference" means all transfers of the assets of a financial institution made or suffered, either after or in contemplation of insolvency, for the purpose of allowing a creditor to gain more than his ratable share of the assets of the institution as determined by Code Section 7-1-202.



(c) The department is authorized to collect all moneys due to the financial institution and to do such other acts as are necessary to conserve its assets and business. In exercising its power as receiver, the department shall give first consideration to the interests of depositors and other creditors as a whole and shall give consideration to the interests of shareholders and other owners only when depositors and other creditors have received or are assured of full payment of their claims.

(d) The department as receiver shall have the power to execute in its name or in the name of the financial institution any instrument necessary or proper to effectuate its powers or perform its duties as receiver. Any instrument executed in the name of the institution pursuant to the authority given by this subsection shall be valid and effectual for all purposes as though executed by proper officers of the institution by authority of its board of directors or other governing body. (Ga. L. 1919, p. 135, art. 7, § 3; Ga. L. 1922, p. 63, § 1; Code 1933, §§ 13-803, 13-808; Code 1933, § 41A-708, enacted by Ga. L. 1974, p. 705, § 1.)

### JUDICIAL DECISIONS

**Collection of debts.** — While superintendent (now department) has possession of bank only superintendent or an authorized

agent may collect debts. *Bennett v. Simmons*, 30 Ga. App. 529, 118 S.E. 493 (1923).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 103.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 131, 132, 135, 139, 142.

**ALR.** — Bank conservators, 107 ALR 1431.

### 7-1-158. Appointment of deputy receivers, counsel, and other assistants.

The department may appoint one or more official agents, to be known as deputy receivers, to assist it in the management, reorganization, consolidation, liquidation, or distribution of the assets and affairs of any financial institution of which it has taken possession as receiver. The department may delegate to each deputy receiver any duty imposed upon or any right or power granted to it as receiver. The department may also employ such other assistants as it deems necessary, including such assistant attorneys general or other attorneys as may be appointed by the Attorney General or independently retained by the department in connection with the receivership. The department may also retain, to assist it in the management, reorganization, consolidation, liquidation, or distribution, any officer or other employee of the financial institution of which it has taken possession. (Ga. L. 1919, p. 135, art. 7, § 9; Ga. L. 1931, p. 7, § 91; Code 1933, §§ 13-811, 13-812; Code 1933, § 41A-709, enacted by Ga. L. 1974, p. 705, § 1.)

## JUDICIAL DECISIONS

**Designation of agent to perform duties connected with liquidation.** — Although superintendent (now department) is not required to transfer bank assets and affairs to the superintendent's office, the superintendent is not expected to be present at all times at office of bank, either in person or by agent clothed with the superintendent's power. The superintendent may designate an agent to perform such duties connected with liquidation as the superintendent could do personally. *Bennett v. Simmons*, 30 Ga. App. 529, 118 S.E. 493 (1923).

**Department may surrender bank to its officers rather than appoint agent.** — Circumstances of a particular case may not demand appointment of such agent. The

superintendent (now department) may conclude to surrender the bank to its officers. *Bennett v. Simmons*, 30 Ga. 529, 118 S.E. 493 (1923).

**Authority to make collections.** — Fact that some person is, during superintendent's (now department's) control, in building or office of bank, engaged in work upon its books or papers, does not, without more, establish that the person has authority to make collections. This is true for the reason, among others, that the superintendent may employ such attorneys, etc., as may be necessary in liquidation and distribution of assets. *Bennett v. Simmons*, 30 Ga. App. 529, 118 S.E. 493 (1923).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 103.

**ALR.** — Bank conservators, 107 ALR 1431.

## 7-1-159. Suspension or continuation of business.

The department is authorized, upon taking possession of the business and property of a financial institution as receiver, to continue or to suspend the business for such period as it may deem necessary to enable it to determine whether to surrender such possession to the financial institution, to authorize a merger or consolidation, to liquidate the affairs of such financial institution, or to take such other action as is authorized by law. (Code 1933, § 41A-710, enacted by Ga. L. 1974, p. 705, § 1.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 103.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 131.

## 7-1-160. Determination to liquidate; filing of supplemental certificate.

The department shall, within six months after the date on which it takes possession of any financial institution as receiver, determine whether or not to liquidate the business and property and distribute the assets of the financial institution. If it shall determine to liquidate, it shall forthwith file with the principal court a supplement to the certificate of possession, setting forth this determination. The department shall then proceed to liquidate the affairs of the financial institution with as much dispatch as shall appear to be expedient under the circumstances. (Code 1933, § 41A-711, enacted by Ga. L. 1974, p. 705, § 1.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, § 1207.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 131.

**7-1-161. Powers and duties of department before and after determination to liquidate.**

Except where otherwise specifically provided, all powers and duties granted by this chapter to the department in possession of the business and property of a financial institution as receiver may be exercised by it both before and after its formal determination, pursuant to this chapter, to liquidate the affairs of such financial institution. (Code 1933, § 41A-712, enacted by Ga. L. 1974, p. 705, § 1.)

## RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 131, 135, 139.

**7-1-162. Inventory and appraisalment.**

(a) When the department has taken possession of the business and property of a financial institution as receiver, it shall forthwith prepare a complete and detailed inventory of the assets of such financial institution. The inventory shall be verified by oath or affirmation of the commissioner or other person making it.

(b) As soon as expedient after taking possession, the department shall cause a complete appraisalment of the assets of the financial institution to be made, in duplicate, under oath or affirmation, by not less than two nor more than three disinterested appraisers selected by it. Such appraisalment shall be included upon the same document or documents as the inventory. The value of the assets shall be computed in the appraisalment as of the date on which the department took possession.

(c) The original and duplicate of the inventory and appraisalment shall be filed in the office of the commissioner. However, if the commissioner shall determine, in accordance with this chapter, to liquidate the affairs of the financial institution, he shall immediately, after the determination to liquidate, file the duplicate inventory and appraisalment with the principal court.

(d) When the department takes possession of business and property of a financial institution which in the two immediately preceding reports of condition filed in accordance with subsection (a) of Code Section 7-1-68 reported assets of less than \$150,000.00, the department shall not be required to secure an appraisalment of the assets of the financial institution under subsection (b) of this Code section or to file an appraisalment of the



assets with a determination to liquidate under subsection (c) of this Code section, unless the principal court, upon application by a shareholder or creditor, shall otherwise order. (Ga. L. 1919, p. 135, art. 7, § 12; Code 1933, § 13-814; Code 1933, § 41A-713, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 1681, § 1.)

#### RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking,  
§§ 740-745.

#### **7-1-163. Notice to holders of assets; power of court to order transfer.**

(a) Upon becoming receiver, the department shall forthwith give notice in writing of such fact to all corporations and persons having custody or possession of any assets or other property of the financial institution in receivership or of any other property with respect to which such institution has a right to possession or custody for any purpose whatsoever.

(b) The principal court shall have the power, except in cases where a jury trial is requested, upon petition of the department, to order any corporation or person which has custody or possession of assets or other property to which such financial institution shall have the right of custody or possession, for any reason whatsoever, to transfer or convey such property to the department and to execute and deliver any instrument necessary to accomplish that purpose.

(c) Any person aggrieved by an order of the court may request a jury trial to determine the validity of his claim. (Ga. L. 1919, p. 135, art. 7, § 5; Ga. L. 1927, p. 195, § 2; Code 1933, § 13-805; Code 1933, § 41A-714, enacted by Ga. L. 1974, p. 705, § 1.)

#### **7-1-164. Power of department to borrow money.**

The department may, without leave of court, borrow money from any federal or state public body or from any person or corporation and grant as security therefor any real or personal property of the financial institution for the purpose of facilitating the liquidation, reorganization, or rehabilitation of the financial institution. The repayment of money borrowed under this Code section and interest thereon shall be considered an expense of administration under Code Sections 7-1-197 and 7-1-202. (Code 1933, § 41A-715, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and  
Financial Institutions, § 1100.

**C.J.S.** — 9 C.J.S., Banks and Banking,  
§ 141.



**ALR.** — Power of receiver or liquidating officer of insolvent bank or trust company to borrow and pledge assets and power of court to authorize him to do so, 91 ALR 1119.

**7-1-165. Surrender of burdensome assets.**

The department may, with leave of court, surrender to the financial institution real or personal property which it finds to be burdensome and of no advantage to the depositors or other creditors of the institution. It may likewise, with leave of court, convey title to any holder of a mortgage, security deed, security interest, or a lien against property in its possession, where it shall appear that to continue to hold such property is burdensome and of no advantage to the financial institution, its depositors, or other creditors. (Code 1933, § 41A-716, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-166. Compromise of claims; extension of mortgages or notes.**

(a) The department may, with leave of court, compound or compromise any debt, claim, or judgment due to the financial institution in receivership and discontinue any action or other proceeding pending therefor.

(b) The department may, without leave of court, enter into an agreement in writing upon such terms as shall seem reasonable to it to extend, for a period not to exceed three years, the maturity of any mortgage or security deed obligation in its possession. However, the department shall not enter into any agreement extending any such obligation which shall have been pledged by the financial institution of which it is in possession as receiver unless it shall first obtain the written consent of the pledgee of such mortgage to such extension. The department may likewise renew or extend, for limited periods, other notes and drafts held by the financial institution. (Ga. L. 1919, p. 135, art. 7, § 7; Ga. L. 1922, p. 63, § 1; Code 1933, §§ 13-807, 13-808; Code 1933, § 41A-717, enacted by Ga. L. 1974, p. 705, § 1.)

**JUDICIAL DECISIONS**

**Conclusiveness of order granting application to settle doubtful claim.** — Order of judge of superior court granted on application of state superintendent of banks (now commissioner of banking and finance), authorizing settlement of bad or doubtful claims, is conclusive on all parties to proceeding, including bank, until set aside in manner prescribed by law for setting aside judgments. *Rucker v. Upshaw*, 199 Ga. 529, 34 S.E.2d 602 (1945).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, § 1100. **C.J.S.** — 9 C.J.S., Banks and Banking, § 139.

**7-1-167. Payment of mortgages and liens; protection of equities.**

The department may, with leave of court, pay off all mortgages, security deeds, security agreements, and liens of or upon any real or personal property which belong to the financial institution. It may, without leave of court, purchase, at a judicial sale or at any sale authorized by an order of a court of competent jurisdiction, any real or personal property in order to protect any equity which the financial institution has in such real or personal property. (Ga. L. 1922, p. 63, § 1; Code 1933, § 13-808; Code 1933, § 41A-718, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-168. Sales of real property.**

The department may, with leave of and upon the terms and conditions prescribed by the court, sell any real property of the financial institution of which it is in possession as receiver. The order of the court authorizing such sale shall state whether the sale shall be entirely for cash or partly for cash and partly for evidences of indebtedness and whether it shall be public or private. Each such sale of real property shall be confirmed by the court if all the terms and conditions of its order authorizing such sale have been complied with. If the real property is located in this state but in a county other than the county of the principal court, the department shall file a certified copy of all orders relating to the property in the office of the clerk of the superior court of the county where the real property is located. (Ga. L. 1919, p. 135, art. 7, § 7; Code 1933, § 13-807; Code 1933, § 41A-719, enacted by Ga. L. 1974, p. 705, § 1.)

**JUDICIAL DECISIONS**

Cited in *FDIC v. Dye*, 642 F.2d 837 (5th Cir. 1981).

**7-1-169. Leases of property.**

The department may, without leave of court, enter into leases for a period not to exceed one year of real or personal property belonging to the financial institution in receivership. It may, with leave of court, enter into such leases for a period not to exceed ten years, upon the terms and under the conditions prescribed by the order of the court. (Code 1933, § 41A-720, enacted by Ga. L. 1974, p. 705, § 1.)

**RESEARCH REFERENCES**

**C.J.S.** — 9 C.J.S., Banks and Banking,  
§ 139.

**7-1-170. Sales or exchanges of securities; sales of liens or personal property.**

(a) The department may, without leave of court, sell on any stock exchange or otherwise, at such times and in such manner as it may deem advisable, listed or unlisted securities which belong to the financial institution in receivership.

(b) The department may, without leave of court, exchange listed or unlisted securities for other securities of the corporation issuing the securities or of a corporation which has merged or consolidated with or has taken over such corporation.

(c) The department may, without leave of court, sell any mortgage or other lien upon real property or any judgment, at such times and in such manner as it shall deem to be advisable.

(d) Except as otherwise specifically provided by this chapter, the department may, without leave of court, sell:

(1) At public sale; or

(2) At private sale, for a net consideration not below the amount at which such personal property has been valued in the appraisalment required by this chapter,

any personal property which belongs to the financial institution in receivership or which such financial institution has the power to sell. It may, with leave of court, sell such personal property at private sale upon such terms and under such conditions as the court shall prescribe to be commercially reasonable. (Ga. L. 1919, p. 135, art. 7, § 7; Code 1933, § 13-807; Code 1933, § 41A-721, enacted by Ga. L. 1974, p. 705, § 1.)

**RESEARCH REFERENCES**

**C.J.S.** — 9 C.J.S., Banks and Banking, § 146.

**7-1-171. Deposit of moneys by department.**

All moneys received by the department as receiver of a financial institution except those moneys necessary to administer the liquidation shall be deposited by it in interest-bearing accounts with one or more institutions authorized by law to receive deposits and subject to the supervision of either federal or state regulatory authorities. It shall require of such depository security therefor, in such amount and of such nature as the department shall deem adequate. (Ga. L. 1919, p. 135, art. 7, § 22; Code 1933, § 13-824; Code 1933, § 41A-722, enacted by Ga. L. 1974, p. 705, § 1.)



**7-1-172. Disposition of property in safe-deposit vault or held for safekeeping.**

(a) The department may, any time after taking possession of a financial institution as receiver, give written notice to anyone claiming or appearing on the books of such financial institution to be the owner or to be entitled to the possession of any personal property left with such financial institution as bailee for safekeeping or depository for hire and to anyone appearing on the books of the financial institution to be the lessee of any safe, vault, or safe-deposit box, notifying such bailor, depositor, or lessee, respectively, to remove all such personal property within the period fixed by the notice, provided that such period shall in no case be less than 60 days after the date of the notice.

(b) At the expiration of such period, if the lessee of a safe, vault, or safe-deposit box has not removed the contents thereof, the department may open such safe, vault, or safe-deposit box in the presence of a notary public not an officer or employee of the financial institution or of the department. The contents, if any, of such safe, vault, or safe-deposit box shall then be sealed and marked by such notary with the name and address of the lessee in whose name such safe, vault, or safe-deposit box appeared on the books of the financial institution and with a list and description of the property therein. The department shall hold such property until it is delivered to the owner or those claiming through him or is disposed of under Article 5 of Chapter 12 of Title 44 and, while holding such property may take such action as it deems appropriate to protect the interest of the owner therein, including reducing the property to cash.

(c) The department shall follow the same procedure and have the same powers with regard to the property left with the financial institution as bailee for safekeeping or depository for hire and not called for within the period specified by the notice.

(d) The contract of bailment, deposit, or lease, if any, shall be considered at an end upon the date designated by the commissioner for the removal of the property therein. The amount of unearned rent or charges, if any, paid by the bailor, depositor, or lessee, shall become a debt of the financial institution. (Code 1933, § 41A-723, enacted by Ga. L. 1974, p. 705, § 1.)

**Cross references.** — Disposition by banks and trust companies of adverse claims to deposits and property held in safe deposit, § 7-1-353.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, § 1024.

**ALR.** — Levy upon or garnishment of contents of safe deposit box, 19 ALR 863; 39 ALR 1215.

Liability for loss of contents of safe-deposit box, 42 ALR 1304; 133 ALR 279.

Rights of owners of securities deposited in bank upon its insolvency, 84 ALR 1534; 126 ALR 625.



Presumption as to ownership of property in safe deposit box, 101 ALR 832.

Presumption and burden of proof, in action or proceeding against bank or its liquidator, as to reasons or justification for failure

to return subject of special deposit on demand, 119 ALR 831.

Bank's or safe deposit company's liability for denying access to box, 4 ALR3d 1462.

### 7-1-173. Bringing or defending actions.

(a) For the purpose of executing any of the powers and performing any of the duties respectively conferred or imposed upon it, as receiver, by this chapter, the department may, in its name as receiver of such financial institution, prosecute any action at law or in equity in any court of this state or of any other state or in any federal court, whether or not such action is pending on behalf of the financial institution at the time it takes possession. It may likewise defend any action at law or in equity pending against the financial institution at the time it takes possession. The department may, in its name as receiver of a corporation, institute and maintain any action which any director, officer, or such corporation or any shareholder or creditor thereof could have instituted or maintained.

(b) Notwithstanding the provisions of other laws to the contrary, the statute of limitations on all causes of action which may accrue to any financial institution over whose affairs the department is receiver shall be extended for a period of six months. (Ga. L. 1922, p. 63, § 1; Code 1933, § 13-808; Code 1933, § 41A-724, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1984, p. 949, § 2.)

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the provisions, decisions under former Ga. L. 1919, p. 135 are included in the annotations for this Code section.

**Constitutionality of section.** — See *Shannon v. Mobley*, 166 Ga. 430, 143 S.E. 582 (1928).

**Section is confined to matters relating to bank's assets.** — This section (see O.C.G.A. § 7-1-173) does not give to superintendent of banks (now department of banking and finance) any authority to prosecute any cause of action which is vested by law in the bank or in its stockholders or the creditors

thereof. The section is in terms confined to such matters as relate to assets of bank as such, debts and liabilities due to bank in its corporate capacity. *Hines v. Wilson*, 164 Ga. 888, 139 S.E. 802 (1927).

**Action against directors causing insolvency** lies by superintendent (now department), not by stockholders. *Hinton v. Mobley*, 167 Ga. 60, 144 S.E. 738 (1928).

**Tax lien on realty.** — Realty sold by department pursuant to court order carries with it any outstanding tax lien. *Stephens v. First Nat'l Bank*, 166 Ga. 380, 143 S.E. 386 (1928).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, § 1100.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 587, 604.

**ALR.** — Right of creditors or stockholders

of insolvent bank in charge of liquidating officer who refuses or fails to enforce liability of third persons to bank, to maintain action for that purpose, and conditions of such right, 97 ALR 169; 116 ALR 783.

**7-1-174. Surrender of possession by department prior to final liquidation; special liquidations and reorganizations.**

(a) The department may, upon conditions approved by it, surrender possession of a financial institution in receivership at any time prior to final liquidation and distribution under the following circumstances:

(1) It may surrender possession to the financial institution itself when it finds the institution to be in a safe and sound condition to resume its business; or

(2) It may surrender to the financial institution itself or to any other corporation or person possession of all or part of the business, property, moneys, credits, or other assets of the financial institution in receivership, to permit to be carried into effect a special plan of liquidation, reorganization, or rehabilitation under the requirements of this Code section.

(b) Before the department may surrender possession of any of the assets of a financial institution pursuant to a special plan of liquidation, such plan shall have been approved by the principal court and a majority of creditors (including depositors) of the institution, both as to number of creditors and as to the amount of claims.

(c) Before the department may surrender possession of any of the assets of a financial institution pursuant to a special plan of reorganization or rehabilitation, such plan shall have the same approvals as required under subsection (b) of this Code section and, in addition, shall be approved by the affirmative vote of the holders of a majority of shares entitled to vote thereon.

(d) Whenever the department shall surrender possession under this Code section, it shall forthwith file with the principal court a supplement to the certificate of possession, setting forth in detail all the conditions and purposes of such surrender. This supplement shall be indexed in a manner which will, insofar as necessary, satisfy the prior record of the certificate of possession.

(e) Whenever the department shall, under this Code section, surrender possession of the entire business and property of a financial institution in receivership, it shall file in the principal court an account, which shall correspond to any other final account under this chapter. Such account shall be subject to exceptions by shareholders, or depositors, or other creditors, and to confirmation by the court, in the same manner as is provided by this chapter for any account filed by the department as receiver. (Code 1933, § 41A-725, enacted by Ga. L. 1974, p. 705, § 1.)

**RESEARCH REFERENCES**

**C.J.S.** — 9 C.J.S., Banks and Banking,  
§ 135.

**7-1-175. Ability of department to reject executory contract or lease of financial institution in receivership.**

Within 180 days after the department takes possession of a financial institution, the department, as receiver, may at its election reject any executory contract to which the financial institution is party without further liability to the financial institution or the receiver or may reject any obligation of the financial institution as a lessee of real or personal property. The department's election to reject a lease creates no claim for rent other than rent accrued to the date of termination or for actual damages, if any, for such termination, not to exceed the equivalent of six months' payment. (Code 1981, § 7-1-175, enacted by Ga. L. 1984, p. 949, § 3.)

**7-1-176. Sale of assets of financial institution in receivership.**

(a) Whenever the department as receiver, with leave of court as provided in Code Section 7-1-156, undertakes to sell all or part of the assets of a financial institution in its possession in consideration of the assumption by the purchaser of the liabilities due to depositors and other creditors other than the holders of subordinated securities, the department shall be under no further obligation to file any inventory, appraisal, partial accounting, or deliver any notice to creditors other than holders of subordinated securities until the filing of the final accounting unless otherwise directed by the court.

(b) Notwithstanding any other law to the contrary, in facilitation of a purchase of assets and assumption of liabilities as described in subsection (a) of this Code section, all or any part of the assets may be sold to the deposit insurer for the financial institution in liquidation notwithstanding such insurer's capacity as receiver or deputy receiver of the financial institution. Such insurer as receiver or deputy receiver may also borrow from itself in its corporate capacity any amounts necessary to facilitate the assumption of deposit liabilities by an existing financial institution or a newly chartered financial institution, assigning any part or all of the assets of the closed bank as security for such loan. (Code 1981, § 7-1-176, enacted by Ga. L. 1984, p. 949, § 4.)



## PART 8

## CLAIMS, PRIORITIES, AND ACCOUNTING IN RECEIVERSHIPS

## RESEARCH REFERENCES

**ALR.** — Trust or preference in respect of money placed in bank for purpose of transaction with third person where bank subsequently becomes insolvent, 31 ALR 472; 93 ALR 881.

Prerogative right of county or other political subdivision to preference in assets of insolvent, 52 ALR 755; 90 ALR 208.

Character of service contemplated by statutes giving a lien or preference, in event of insolvency, to servants, employees, laborers, etc., 54 ALR 567.

Right of one indebted to insolvent bank to setoff deposits which he has made as trustee, 55 ALR 822.

Election of remedies or estoppel as regards claims against insolvent bank, 69 ALR 456.

Insolvency of bank guaranty fund as affecting rights or obligations of member banks and their depositors, 78 ALR 808.

Construction and effect of statutes or constitutional provisions in relation to priority or preference of deposits in assets of insolvent bank or trust company, 86 ALR 1310; 93 ALR 1017.

Rights against receiver or other liquidating officer of bank as to paper deposited before but not collected at the time bank closed its doors, 94 ALR 1395.

Character or class of claims protected by deposit by foreign corporation as condition of doing business, and rank or priority of such claims, 104 ALR 748.

Rights and preferences in respect of assets of insolvent bank as affected by its division into departments, 114 ALR 680.

Rights of owners of securities deposited in bank, upon its insolvency, 126 ALR 625.

**7-1-190. Preservation of assets; proceedings in lieu of attachment, execution, or repossession.**

(a) The status of all parties shall become fixed on the date the department takes possession of a financial institution. No corporation or person shall thereafter acquire any lien or charge against the financial institution for so long as it remains in receivership, provided that nothing in this Code section or elsewhere in this chapter shall be construed to impair any preferred claim arising pursuant to Code Section 11-4-214.

(b) No execution, attachment, or repossession (whether by action or otherwise) shall issue or be proceeded with against any assets owned by or in the custody or possession of a financial institution in receivership. In lieu of the right to issue an attachment or execution against assets of or lawfully in the possession or custody of the financial institution, a plaintiff may proceed by giving written notice of his claim to the department or to the deputy receiver of such financial institution; and he shall thereafter prove his claim in the regular manner prescribed by this chapter. If, in filing its account, the department rejects the claimed right to execution or attachment, the court shall adjudicate the matter as in the case of other disputed claims. (Ga. L. 1919, p. 135, art. 7, § 3; Code 1933, § 13-803; Code 1933, § 41A-801, enacted by Ga. L. 1974, p. 705, § 1.)



JUDICIAL DECISIONS

**Purpose of Ga. L. 1919, p. 135 (see O.C.G.A. § 7-1-190)** is to protect possession of assets of bank by superintendent (now department) from interference by any legal proceedings, such as one for receivership, by levy of process upon such assets, or any

proceedings by which possession of superintendent would be disturbed. *Berrien County Bank v. Alexander*, 154 Ga. 775, 115 S.E. 648 (1923); *Bennett v. Green*, 156 Ga. 572, 119 S.E. 620 (1923).

RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking, § 184.  
**ALR.** — Deposits on interest as waiver of state's priority, 42 ALR 1296.  
Trust or preference in assets of insolvent bank in respect of proceeds of collection as affected by notice or instructions with respect to collection, 90 ALR 6.  
Bank conservators, 107 ALR 1431.

Rights and preferences in respect of assets of insolvent bank as affected by its division into departments, 114 ALR 680.  
Payment of depositor's debt to insolvent bank against which deposit might otherwise have been set off as affecting depositor's equivalent rights, 139 ALR 723; 162 ALR 1175.

**7-1-191. Exclusivity of claims procedure; effect of receivership on pending actions.**

All claims against the financial institution, action upon which has not been commenced prior to the time the department took possession, shall be presented in the regular manner provided by this chapter for the presentation of claims. Neither a depositor or other creditor of the financial institution nor any other claimant may maintain any action at law or in equity upon such claim, except by regular method provided by this chapter for exceptions to the accounting of the department as receiver. However, an action for the return of specific property or property with respect to which the plaintiff holds a perfected security interest or security title which could have been recovered by the plaintiff from the financial institution in receivership may be maintained in the principal court against the department in its name as receiver of the financial institution. All actions pending against the financial institution when the department takes possession shall be automatically stayed during the receivership, provided that all such actions, except those specified in subsection (b) of Code Section 7-1-190, may proceed with prior approval of the principal court. (Code 1933, § 41A-802, enacted by Ga. L. 1974, p. 705, § 1.)

JUDICIAL DECISIONS

**Remedy exclusive.** — Under state law, an exclusive remedy. *FDIC v. Willis*, 497 F. Supp. 272 (S.D. Ga. 1980).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, § 1136.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 196.

**ALR.** — Right of creditors or stockholders of insolvent bank in charge of liquidating

officer who refuses or fails to enforce liability of third persons to bank, to maintain action for that purpose, and conditions of such right, 97 ALR 169; 116 ALR 783.

### 7-1-192. Notice to depositors and other creditors to present claims.

(a) After filing a supplement to the certificate of possession setting forth its determination to liquidate the affairs of a financial institution in receivership, the department shall forthwith give notice of such determination to all corporations or persons who appear upon the books of the financial institution as depositors or other creditors or who are otherwise known to the department to be or who claim to be depositors or other creditors or who have given notice to the department claiming a right of execution or attachment against any assets owned by or legally in the custody or possession of the financial institution.

(b) The notice to depositors shall state the amount which the books or other records of the financial institution show to be due to such depositor. It shall also state that unless such depositor shall, within a specified time, present to the department his bank statement or passbook or other evidence of his account showing a different amount to be due or unless such depositor shall, within a specified time from the date of such notice, otherwise prove in the manner provided by this chapter that a different amount is due, the amount shown to be due by the books of the financial institution will be conclusively presumed to be correct unless the court, pursuant to this chapter, grants him an extension of time.

(c) The notice to each creditor, other than a depositor, shall inform such creditor that he must present his claim in the manner provided by this chapter within a specified time from the date of such notice or else be permanently barred from sharing in any distribution of the assets of the financial institution unless the court, pursuant to this chapter, grants him an extension of time.

(d) The department shall also advertise, in the manner prescribed by this chapter, its determination to liquidate the financial institution. Such advertisement shall state that the department has filed an inventory and appraisal of the assets of the institution and shall designate the superior court with which such documents have been filed and shall describe the legal consequences to depositors and other creditors of failure to prove those claims within the time set in the notice. For purposes of this advertisement and other notices or advertisements required hereunder, the department may, to the extent it deems appropriate, describe shareholders of building and loan associations and credit unions as such, not by use of the defined term "depositors" used in this chapter.

(e) The department shall specify as the last day upon which depositors and other creditors can prove their claims a date at least 30 days after the date of the sending of such notice to depositors and creditors. However, claims based upon deficiencies in, or surcharges with respect to, assets which such financial institution held in a fiduciary capacity may be proved at any time within six months after the appointment of a substituted fiduciary of the estate of which such assets were a part and the adjudication of the account of such estate by the competent court. (Ga. L. 1919, p. 135, art. 7, § 13; Code 1933, §§ 13-815, 13-816; Code 1933, § 41A-803, enacted by Ga. L. 1974, p. 705, § 1.)

### JUDICIAL DECISIONS

**Cited** in *Jones v. FDIC*, 151 Ga. App. 619, 260 S.E.2d 751 (1979); *FDIC v. Jones*, 161 Ga. App. 867, 291 S.E.2d 70 (1982).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, § 1136.

### 7-1-193. Proof of claims of depositors.

(a) Any depositor who disagrees with the amount shown by the books or other records of the financial institution to be due to him shall prove his claim by presenting his bank statement or passbook or other documentary indication of indebtedness to the department within the time and in the manner designated by the department pursuant to this chapter. Any such depositor who shall not have received or shall have lost his bank statement or passbook or other documentary evidence or who shall believe that the amount shown to be due him by such bank statement or passbook or other documentary evidence is incorrect shall, within the time designated by the department, present his claim to the department by whatever method, including affidavits, the department shall designate.

(b) Any depositor who shall not present his claim within the designated time and in the manner provided by this Code section shall be bound by the amount appearing to be due to him upon the books or records of the financial institution or, where the name of such depositor does not appear at all upon the books or records of the financial institution or appears on such books or records but with no balance appearing to be due to him by the financial institution, shall be permanently barred from sharing in any distribution of the assets of the financial institution. However, the principal court may, upon petition and adequate cause shown, permit any depositor to file his claim at a later date, but no claim shall in any event be allowed to be filed after the last day for the filing of exceptions to the first account of the department.



(c) This Code section shall not, however, be construed to deprive any depositor of any right of action at law or in equity which he may have against an officer or employee or former officer or employee of the financial institution or upon the bond of such officer or employee or former officer or employee for any act committed by such officer or employee which resulted in such depositor's name not appearing upon the books of the financial institution or appearing upon them but being credited with an amount below that actually due.

(d) The department shall prescribe the form for the proof of claim of all depositors and for an affidavit as to the truth of statements therein to be included with the claim. Whenever requested by any such depositor to prepare such proof of claim or to take the affidavit thereto, the department may do so without any charge to such depositor if the department concludes that it would be burdensome or difficult for the depositor to prepare the proof. (Ga. L. 1919, p. 135, art. 7, § 18; Ga. L. 1925, p. 119, § 1; Code 1933, § 13-820; Code 1933, § 41A-804, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 650.

11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1115, 1137.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 147-149.

**ALR.** — Right of depositor to rescind, or to claim a trust in respect of a deposit

because of insolvency of bank when it was made, 20 ALR 1206; 81 ALR 1078.

Admissibility of extrinsic evidence to explain or contradict bank deposit slips, deposit entries in passbooks, certificates of deposit, or similar instruments, 42 ALR2d 600.

#### 7-1-194. Proof of claims of creditors.

Creditors other than depositors shall not share in any distribution of the assets of the financial institution unless the creditor or his designated representative shall, within the time and in the manner specified by the department pursuant to this chapter, present to the department a statement of his claim, together with a copy of any book entries pertaining thereto, any evidence of indebtedness or other instrument received as evidence thereof, the details with respect to any collateral or agreement of pledge received in connection therewith, and a description of any insurance pertaining thereto. The department shall prescribe the form for the proof of claim of creditors and for affidavit as to the truth of statements therein to be included with the claim. However, the court may, upon petition and adequate cause shown, permit any creditor to file his claim upon a later date, but no claim shall in any event be allowed to be filed after the last day for the filing of exceptions to the first account of the department. (Ga. L. 1919, p. 135, art. 7, § 18; Ga. L. 1925, p. 119, § 1; Code 1933, § 13-820; Code 1933, § 41A-805, enacted by Ga. L. 1974, p. 705, § 1.)



RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1115, 1137.  
**ALR.** — Balance due other banks on clearing house settlement as preferred claim against insolvent bank, 44 ALR 1535.

Election of remedies or estoppel as regards claims against insolvent bank, 69 ALR 456.

7-1-195. Allowance of claims.

For the purposes of the accounting provided for in this chapter, the department shall allow the claims of depositors for the amounts shown to be due to them upon the books or other records of the financial institution (unless it determines such books or records to be in error) or for such other amounts as they shall, within the time and in the manner provided by this chapter, prove to the satisfaction of the department are due to them. It shall likewise allow the claims of all other creditors, when presented within the time and in the manner provided by this chapter, if it shall be satisfied that the amounts claimed are rightfully due. In allowing claims, the department may change their rank to that which it determines to be proper and may reduce them by exercise of the financial institution's right of setoff against the claimant. It shall reject all other claims of depositors and other creditors. (Ga. L. 1919, p. 135, art. 7, § 15; Ga. L. 1927, p. 195, § 4; Code 1933, § 13-817; Code 1933, § 41A-806, enacted by Ga. L. 1974, p. 705, § 1.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1115, 1137.  
**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 147-149.  
**ALR.** — Election of remedies or estoppel

as regards claims against insolvent bank, 69 ALR 456.  
 Right to set off deposit in insolvent bank against indebtedness to bank, 97 ALR 588.

7-1-196. Advance payment of dividends to depositors.

(a) After filing a supplement to the certificate of possession setting forth its determination to liquidate the affairs of the financial institution, the department may, without leave of court and without filing an account, make an advance payment of a dividend to all depositors the amounts of whose claims, as they appear upon the books or other records of the financial institution, are undisputed. The dividend shall be calculated as if the claims of all other depositors, as they appear upon the books or other records of the financial institution, and the claims of all creditors or other corporations or persons who assert priority over or parity with depositors in the order of distribution of the assets, were valid and uncontested.

(b) However, the department shall not make such an advance payment of a dividend to any depositor until it shall have set aside an amount sufficient to pay in full the claims of all creditors or other corporations or

persons asserting or entitled to priority over depositors in the order of distribution and to pay the proportionate dividend on the amounts claimed by the other depositors and by any creditors or other corporations or persons who are entitled to or who claim parity with depositors in the order of distribution provided for by law. The department shall likewise set aside, before making such advance payment, such amount as it shall deem necessary for the expenses of administration of the receivership. (Ga. L. 1919, p. 135, art. 7, § 21; Code 1933, § 13-823; Code 1933, § 41A-807, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, § 1138.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 194, 224.

#### 7-1-197. Expenses of administration.

Any reasonable expenditure made by the department as receiver of a financial institution, including any expense incurred in the management, reorganization, consolidation, liquidation, or distribution of the assets and affairs of the financial institution, any payment of a loan or interest thereon under Code Section 7-1-164, and any compensation paid to the deputy receiver, attorneys, or any other person employed to assist the department in such management, reorganization, consolidation, liquidation, or distribution shall be paid out of the assets of the financial institution, provided it is included in any partial or final account filed by the department pursuant to this chapter and is approved by the principal court in which such account is filed. Where such expenses are incurred or such compensation is paid for the benefit of the estate of more than one financial institution in the possession of the department as receiver, an equitable portion of such expenses or compensation shall be paid out of the assets of each financial institution on whose behalf such expenditures were incurred or paid. (Ga. L. 1919, p. 135, art. 7, § 23; Ga. L. 1925, p. 119, § 1; Ga. L. 1931, p. 7, § 91; Code 1933, § 13-825; Code 1933, § 41A-808, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1101, 1143.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 644.

#### 7-1-198. Filing or ordering partial or final account; notice of filing; exceptions.

(a) At any time after the expiration of the period fixed by the department for the presentation of claims, it may file a partial account of its administration of the business and property of the financial institution, duly

verified under oath or affirmation, with the principal court. If the department does not file its first account within one year after it takes possession of a financial institution, any depositor, other creditor, or shareholder of such financial institution may petition the court to order the department to file an account. The court may, in its discretion, grant or refuse the petition. Whenever it becomes economically advisable to wind up finally the affairs of a financial institution in liquidation, the department shall file with the principal court its final account, duly verified under oath or affirmation. The clerk of the principal court shall not be under any duty to recopy or otherwise to record any account and shall make no charge except the regular fee for filing such or similar papers.

(b) The account shall present the department's administration of the estate, including a statement of all receipts or expenditures, a list of all claims which have been allowed, and a separate list of claims which have been objected to or are disputed, showing as to all depositors and other creditors, their names and addresses, the amounts due or claimed to be due to them, and any priorities in the order of distribution granted to or claimed by them. A final account need not present matters previously settled incident to partial accounts.

(c) The department shall forthwith give written or printed notice of the filing of an account to all corporations or persons whom it knows to be, or who claim to be depositors or other creditors or who have given to it notice claiming a right of attachment or execution. Such notice shall also state that unless an exception to the account or to any item therein is filed with the principal court within 30 days from the date of the filing thereof, it will be confirmed absolutely. The department shall also advertise such notice in a newspaper or newspapers as provided in this chapter, stating the date upon which it has filed its partial or final account and that all exceptions to the account must be filed within 30 days from the date of the filing of the account. The department shall forthwith file with the court, under oath or affirmation, a statement that it has, in the manner provided by this chapter, sent both the notice of its determination to liquidate and the notice of its filing of an account to all corporations or persons entitled thereto. The department shall also file the proofs of publication of the advertisements required by this Code section.

(d) Any corporation or person who is or who claims to be a depositor, other creditor, or shareholder of a financial institution or who has given to the department notice of his claim to the right of execution or attachment or who asserts any other type of claim against a financial institution may, within 30 days after the filing of an account by the department, file in the principal court specific exceptions in writing, under oath or affirmation, to such account or to any item therein. Notice of any exception to an individual item in an account shall forthwith be personally served upon or sent by registered or certified mail or statutory overnight delivery to the



corporation or person whose claim is thus objected to or his counsel and also the department or the deputy receiver managing the affairs of the particular financial institution or the counsel of either. Affidavit of the serving or sending of such notice shall forthwith be filed with the court.

(e) Whenever an exception is filed to any expenditure made by the department as an expense of administration, the department shall keep an accurate record of the salaries and other expenses properly incurred by it in the contesting of such exception. If the exception is overruled and the expenditure is sustained, the court may, in its discretion, assess such expenses and salaries, together with the regular costs provided by law, upon the depositor, other creditor, or shareholder filing such exception. (Ga. L. 1919, p. 135, art. 7, §§ 15-17; Ga. L. 1927, p. 195, §§ 4, 4A; Code 1933, §§ 13-817, 13-818, 13-819; Code 1933, § 41A-809, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2000, p. 1589, § 3.)

**Editor's notes.** — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code

section is applicable with respect to notices delivered on or after July 1, 2000.

#### RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 178, 147-149.

#### 7-1-199. Adjudication of rejected claims and exceptions to account.

(a) If any claim has been rejected by the department or any exception has been filed to the account or to any item thereof, the principal court shall, as soon as expedient after the expiration of the period for the filing of exceptions to the account, fix a date for hearing in court arguments on all rejected claims and all exceptions to the account or to any item thereof. The department shall give notice of such hearing to all corporations or persons whose claims have been rejected by the department or objected to in the manner provided by this chapter. It shall likewise give notice to all corporations or persons who have filed exceptions to the account or to any item thereof. Such notice shall set forth, insofar as possible, the reasons for the rejection of the claim or the nature of the exception to the item of the account and shall state that all parties whose claims are rejected or objected to must appear in the principal court upon the date fixed by the court to prove their claims or they will be bound by the ex parte decision of the court.

(b) The principal court in which the account is filed shall itself hear arguments upon any rejected claim or upon any exception to an account, or to any item thereof, upon the date fixed by it for this purpose. The court shall itself decide, without delay, all matters in controversy. If any party does not appear in court on the day fixed, the court shall conduct the hearing ex



parte and shall render its decision upon the merits as they appear after such hearing. (Code 1933, § 41A-810, enacted by Ga. L. 1974, p. 705, § 1.)

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the issues dealt with by the provisions, decisions under former Ga. L. 1919, p. 135 are included in the annotations for this Code section.

**Remedy exclusive.** — Under state law, procedure provided in O.C.G.A. Ch. 1, T. 7 is an exclusive remedy. *FDIC v. Willis*, 497 F. Supp. 272 (S.D. Ga. 1980).

**Prerequisite to suit under Ga. L. 1919, p. 135.** — Where superintendent (now depart-

ment) has given required notice as to presentation of claims, suit cannot be brought against bank upon any claim, unless claim, with sworn proof thereof, has been filed with superintendent of banks or office of bank and been rejected by the superintendent, and unless suit be brought as required by Ga. L. 1919, p. 135 (see O.C.G.A. § 7-1-199). *Berrien County Bank v. Alexander*, 28 Ga. App. 55, 110 S.E. 311 (1922) (decided under Ga. L. 1919, p. 135).

### RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 147-149, 198.

### 7-1-200. Confirmation of account; distribution of dividends; final disposition of assets insufficient for distribution; cancellation of articles.

(a) If the department has approved all depositors' claims, as proved by them pursuant to this chapter or if not proved as they appear upon the books or other records of the financial institution and if no exception has been filed to an account or to any item thereof within 30 days after the filing of such account by the department, the principal court shall confirm the account absolutely. If any funds are available for distribution, the department shall then declare and pay out of such funds a partial or a final dividend, according to the priorities established by law. If the department has rejected any deposit or claim or if any exception has been filed, the court shall confirm the account as to all other matters and claims. The department may then declare and pay out of the funds available for distribution, if any, a dividend, according to the priorities established by law. The dividend shall be calculated as if all deposits and other claims were valid and approved. The department, before paying any such dividend, shall set apart funds or assets sufficient to pay required distribution on any claim still being asserted which has been rejected or reduced in priority by the department or to which an exception has been filed if the amount and the priority claimed were sustained by the court. If any such claim shall be determined by the court to be valid, the department shall pay to the corporation or person entitled thereto the dividend which has been set apart in the manner provided by this Code section. If any such claim shall be determined by the court to be invalid, the dividend which has been set apart in the manner provided by this Code section shall be distributed in the order of the priorities established by law to those whose claims have

been approved by the court; provided, however, that any final determination as to disputed claims may be appealed as provided by law and payments may be withheld pending the results of the appeal.

(b) The confirmation of any account after the adjudication of all claims therein which have been rejected or reduced in priority by the department or to which exceptions have been filed and of all other exceptions to such account shall be conclusive as to all matters therein. Except as otherwise provided in this chapter, no claim of any depositor or other creditor shall be valid if not listed and approved in the first account which has been filed. The confirmation of the final account and distribution thereunder shall discharge the department, the commissioner, the deputy receiver, any other employee, and the legal counsel, as well as the surety for any of them, from all further civil liability for any act done in an official capacity with respect to the receivership.

(c) Upon confirmation of the final account the department may impound the balance of the assets, including real property, remaining in its hands and shall not be obligated to sell such assets or actively to collect on the impounded assets. With regard to said assets, including real estate and including after-discovered assets, it shall, however, retain all of its powers to receive payment for them or, with leave of court, to adjust or compromise them. After its final accounting and discharge, the department shall have power to make further distribution to the creditors, depositors, and shareholders when, in its opinion, sufficient funds are realized to justify such distribution after deducting reasonable costs for collection, preservation, and distribution. If the department is of the opinion that the funds collected or probably to be collected will be insufficient to make a distribution practicable and that all interested claimants will not in the future have their claims satisfied, it shall, after deducting reasonable costs for collection and preservation, hold the remainder of such property subject to Article 5 of Chapter 12 of Title 44. Thereafter, the articles of incorporation or charter shall no longer be valid and the department shall notify the Secretary of State that the receivership has been concluded. The Secretary of State shall promptly cancel such articles or charter of record in that office. (Ga. L. 1919, p. 135, art. 7, § 21; Code 1933, § 13-823; Code 1933, § 41A-811, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1980, p. 972, § 4.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, § 1138.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 147-149.

#### 7-1-201. Unclaimed dividends.

Whenever a dividend remains unclaimed six months after it has been declared and the department is unable to locate the depositor or other

claimant to whom said dividend was payable, the dividend shall become a part of the general assets of the financial institution and be distributed as other assets. (Ga. L. 1919, p. 135, art. 7, § 24; Ga. L. 1925, p. 119, § 1; Code 1933, § 13-826; Code 1933, § 41A-812, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-202. Order of payment of liabilities; secured or preferred claims and liens.**

(a) In the distribution of the assets of a financial institution which is liquidated or dissolved, whether under this chapter or by any other method, the order of payment of liabilities of the financial institution in the event that its assets are insufficient to pay in full all its liabilities for which claims are duly made shall be:

- (1) First, the payment of costs and expenses of administration of the liquidation or dissolution;
- (2) Second, the payment of debts due depositors;
- (3) Third, the payment of all state taxes;
- (4) Fourth, judgments;
- (5) Fifth, contractual obligations;
- (6) Sixth, unliquidated claims for damages and the like;
- (7) Seventh, capital securities.

(b) Nothing in this chapter shall impair the validity or the priority otherwise accorded by law to any security interest, security title, preferred claim arising under Code Section 11-4-214, or any lien arising by force of law; provided, however, any of the foregoing may be delayed in payment by the principal court until costs of administration including loans or interest payments under Code Section 7-1-164 or the costs of selling or otherwise disposing of assets under this chapter have been met in any case where the principal court determines that the claimant of the security interest, security title, preferred claim, or lien has expressly or impliedly consented to the administrative activities involved or has benefited from such activities. (Ga. L. 1919, p. 135, art. 7, § 19; Ga. L. 1925, p. 119, § 1; Ga. L. 1927, p. 195, § 5; Ga. L. 1931, p. 7, § 91; Code 1933, § 13-821; Code 1933, § 41A-813, enacted by Ga. L. 1974, p. 705, § 1.)

**Cross references.** — Priority of payment of notes, debentures, etc., issued by a bank or trust company which becomes insolvent or is liquidated, § 7-1-419.

**JUDICIAL DECISIONS**

**Georgia Law 1927, p. 195, § 5 does not violate Ga. Const. 1976, Art. VII, Sec. I, Para. IV** (see Ga. Const. 1983, Art. VII, Sec. II) even though it fixes priority of other claims relative to taxes. *Baggett v. Mobley*, 171 Ga. 268, 155 S.E. 334 (1930).



**Georgia Law 1927, p. 195, § 5 does not violate Ga. Const. 1976, Art. VII, Sec. I, Para. III** (see Ga. Const. 1983, Art. VII, Sec. I, Para. III) since it does not affect uniformity of taxes in any way, it does not in any way change or make less uniform the rate of taxes fixed upon the same class of subject, nor does it affect ad valorem taxes on all property subject to taxes within territorial limits of the state; even though it fixes priority of other claims relative to taxes. *Baggett v. Mobley*, 171 Ga. 268, 155 S.E. 334 (1930).

**Order of distribution of insolvent bank.**

— The order of distribution of assets upon insolvency of a bank which grants payment of debts due depositors priority over payment of state taxes is not an unconstitutional violation of Ga. Const. 1976, Art. VII, Sec. I, Paras. I, III, IV (see Ga. Const. 1983, Art. VII, Sec. I, Paras. I, III and Art. VII, Sec. II). *Felton v. McArthur*, 173 Ga. 465, 160 S.E. 419 (1931).

**Statute is general law.** — Ga. L. 1927, p. 195, § 5 (see O.C.G.A. § 7-1-202) does not violate Ga. Const. 1976, Art. I, Sec. II, Para. VII (see Ga. Const. 1983, Art. III, Sec. VI, Para. IV) and is a general law and not a special law; and it was competent for the legislature to pass this general law without violating this provision of the constitution. *Felton v. McArthur*, 173 Ga. 465, 160 S.E. 419 (1931).

**Georgia Law 1927, p. 195, § 5 does not attempt to exempt property from taxation.** — Georgia Law 1927, p. 195, § 5 (see O.C.G.A. § 7-1-202) may render execution issued by tax collector unfruitful, in view of fact that claims which are given priority may exhaust property classed among assets of bank; but no attempt is made by the statute to exempt property from taxation; even though it fixes priority of other claims relative to taxes. *Baggett v. Mobley*, 171 Ga. 268, 155 S.E. 334 (1930).

**Priorities set by Ga. L. 1927, p. 195, § 5 supersede O.C.G.A. §§ 48-5-28 and 48-2-56.** — Priorities of payment established by Ga. L. 1927, p. 195, § 5, (see O.C.G.A. § 7-1-202) which allow payment to depositors before payments of state taxes supersede the provisions of Code 1933, §§ 92-5707 (see O.C.G.A. § 48-5-28) and 92-5708 (see O.C.G.A. § 48-2-56) which make tax collection a priority above other debts. *Felton v. McArthur*, 173 Ga. 465, 160 S.E. 419 (1931).

**Property in possession of liquidating agent of bank cannot be levied upon.** *Gormley v. Askew*, 176 Ga. 210, 167 S.E. 600 (1933).

**Equity will enjoin levy on fieri facias against insolvent bank.** — Equity will enjoin tax collector and sheriff from trying to enforce by levy and sale collection of tax fieri facias against insolvent bank taken over by superintendent of banks (now commissioner of banking and finance) for liquidation. *Gormley v. Askew*, 176 Ga. 210, 167 S.E. 600 (1933).

**"Debts due depositors" must mean all depositors,** and there are several kinds. There are general deposits, special deposits and deposits for specific purposes. *Gormley v. Board of Comm'rs of Rds. & Revenues*, 178 Ga. 439, 173 S.E. 667 (1934).

**Effect of liquidation upon liability on checks deposited for collection.** — Where principal-agent relationship exists between bank and depositor for purpose of collecting on check and agency ceases due to failure of bank and takeover of it by superintendent of banks (now commissioner of banking and finance), the check and its proceeds are property of depositor and not subject to provisions of this section. *Hogansville Banking Co. v. Ware*, 171 Ga. 167, 155 S.E. 4 (1930).

**Ad valorem taxes on bank's assets are not administrative obligation or expense** incurred by receiver but are a charge imposed by sovereign. Taxes are referred to as expenses of administration only because it is a duty of receiver to pay them. *Tharpe v. Gormley*, 184 Ga. 605, 192 S.E. 211 (1937).

**Taxes payable only after expenses of liquidation and claims of depositors.** — State taxes are payable only after all costs and expenses of the administration of the liquidation or dissolution, and the payment of the claims of depositors. *Roberts v. Gunter*, 251 Ga. 276, 304 S.E.2d 369 (1983).

**Waiver of state's right to first collect taxes extends to assets.** — If, in administration of assets of insolvent bank, the superintendent of banks (now commissioner of banking and finance), comes into possession of deeds given to bank conveying title to land, leaving debtor to bank owner of a mere equity in premises conveyed, the state's waiver of its right to first collect its taxes (in favor of depositors' claims), as embodied in Ga. L.



1927, p. 195, § 5 (see O.C.G.A. § 7-1-202), naturally extends so as to include such taxes as are a liability upon the assets in hands of

superintendent of banks. *Gormley v. Askew*, 176 Ga. 210, 167 S.E. 600 (1933).

### OPINIONS OF THE ATTORNEY GENERAL

**Credit union acting as receiver violates section by preferring unsecured creditor.** — A credit union deposit insurance corporation, acting as receiver or deputy receiver of member credit union, cannot purchase un-

secured note with assets of credit union since such purchase would give unsecured creditor priority over depositors and other more senior claimants. 1977 Op. Att'y Gen. No. 77-7.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1142, 1146.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 147-149.

**ALR.** — Right of owner of check which the drawee bank held for him at time it closed its doors, to a preference, 17 ALR 196.

Right of depositor to rescind, or to claim a trust in respect of a deposit because of insolvency of bank when it was made, 20 ALR 1206; 81 ALR 1078.

Balance due other banks on clearing house settlement as preferred claim against insolvent bank, 44 ALR 1535.

Right, in absence of statute, to preference in respect of deposit of public funds in insolvent bank, 51 ALR 1336; 65 ALR 690; 90 ALR 184; 103 ALR 621; 167 ALR 640.

Prerogative right of county or other political subdivision to preference in assets of insolvent, 52 ALR 755; 90 ALR 208.

Trust or preference in assets of insolvent bank or trust company in respect of funds which it held as executor, administrator, or testamentary trustee, 56 ALR 806; 83 ALR 1110; 94 ALR 1123.

Deposit of funds except from claims of creditors of depositor, as entitled to preference out of the assets of insolvent depositor, 71 ALR 1181.

Right of holder of cashier's check to preference out of assets of insolvent banks, 73 ALR 66; 95 ALR 676.

Right of depositor to preference in assets of insolvent bank because dissuaded by bank officials or employees from withdrawing deposit after insolvency, 80 ALR 795.

Rights and preference in respect of assets of insolvent bank or trust company as affected by its division into departments, 81 ALR 1479; 89 ALR 1218; 114 ALR 680.

Constitutionality of statute relating to preferences in assets of insolvent bank, 83 ALR 1080.

Garnishment of deposit by depositor's creditor as entitling latter to trust or preference out of assets of insolvent garnishee bank, 83 ALR 1085.

Preference in assets of insolvent bank in respect of deposits of veterans' compensation or war-risk insurance proceeds or pension money, 83 ALR 1089; 84 ALR 1530.

Trust or preference in assets of insolvent bank or trust company in respect of deposit by receiver, 83 ALR 1097.

Trust or preference in assets of insolvent bank or trust company as to deposits by trustee in bankruptcy, 83 ALR 1105.

Trust or preference in assets of insolvent bank or trust company in respect of funds which it held as executor, administrator, or testamentary trustee, 83 ALR 1110; 94 ALR 1123.

Waiver of right of government to preference in the assets of insolvent debtor by taking security, 83 ALR 1119.

Right of surety who discharges obligation due to government to be subrogated to priority or preference of latter, 83 ALR 1131.

Rights of owners of securities deposited in bank upon its insolvency, 84 ALR 1534; 126 ALR 625.

Construction and effect of statutes or constitutional provisions in relation to priority or preference of deposits in assets of insolvent bank or trust company, 86 ALR 1310; 93 ALR 1017.

State's prerogative right of preference at common law, 90 ALR 184; 167 ALR 640.

Prerogative right of county or other political subdivision to preference in assets of insolvent, 90 ALR 208.

Right of holder of cashier's check to preference out of assets of insolvent bank, 95 ALR 676.

Trust or preference in assets of insolvent

bank in respect of money deposited or left on deposit pursuant to agreement of bank to purchase bonds or make other investment for depositor, 105 ALR 516.

### **7-1-203. Subrogation of insurer of deposits or shares.**

Where the deposits or shares of a financial institution are insured by a federal public body or otherwise, the claims of depositors shall be subrogated in favor of said insurer to the extent that it pays or makes available for payment claims of such depositors against the financial institution, provided that the rights of such depositors to receive dividends or other distributions upon that portion of their claims not made available for payment shall not be affected by such subrogation. (Code 1933, § 41A-814, enacted by Ga. L. 1974, p. 705, § 1.)

### **7-1-204. Liquidation of excess assets by trustees.**

If any unliquidated assets remain in the department's possession after the filing and confirmation of its final account, the payment in full of the claims of all depositors, creditors, and other claimants which have been approved by the court and the distribution to shareholders of any cash balance remaining thereafter, it shall call a meeting of all the shareholders of the financial institution by giving them written notice at least 30 days before the day fixed for the meeting. At such meeting, the shareholders shall elect by ballot a trustee or trustees, who shall complete the liquidation. A majority of the shares present in person or by proxy shall be necessary to elect such trustee or trustees. The department shall file a certified copy of the minutes of said meeting with the principal court. If no trustee is elected in this manner on the day designated, the department shall petition the principal court for the appointment of a trustee or trustees. The trustee or trustees who are thus elected by the shareholders or appointed by the court shall give bond to the state, in such amount, with such surety, and under such conditions as the court may direct. The department shall then transfer to such trustee or trustees all the assets of the financial institution which are still in its possession. After such transfer by the department to a trustee or trustees for the benefit of the shareholders, the financial institution shall have no corporate powers or privileges whatsoever, except that its shareholders may elect a successor trustee or trustees upon death, removal, or inability of the first trustee or trustees to act. The trustee or trustees shall not succeed to any powers or privileges except such as shall be necessary to the liquidation of the remaining assets which have been transferred to such trustee or trustees by the department. (Ga. L. 1919, p. 135, art. 7, §§ 24-27; Code 1933, §§ 13-827, 13-828, 13-829; Code 1933, § 41A-815, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-205. Destruction of records.**

The department is authorized to destroy all records of the financial institution of which it was in possession as receiver and all records of such receivership at the expiration of six years from the date of the absolute confirmation of its final account, except where any provision of this chapter expressly provides a different method for the disposition of the records or a longer period for their preservation. (Code 1933, § 41A-816, enacted by Ga. L. 1974, p. 705, § 1.)

**PART 9****RECEIVERSHIP PROCEDURES INVOLVING TRUST OR POOLED ASSETS****RESEARCH REFERENCES**

**ALR.** — Trust or preference in respect of money placed in bank for purpose of transaction with third person where bank subsequently becomes insolvent, 31 ALR 472; 93 ALR 881.

Trust or preference in respect of money used to purchase exchange or to be trans-

mitted, 57 ALR 1168; 84 ALR 1470; 93 ALR 938; 101 ALR 631.

Trust or preference in, or lien upon, assets of insolvent bank or trust company in respect of funds which it held as executor, administrator, or testamentary trustee, 94 ALR 1123.

**7-1-220. Definitions and applicability.**

(a) As used in this part, the term:

(1) "Pooled assets" means mortgages, securities, or other assets comprising any mortgage or securities pool operated by such financial institution (whether said assets are held in the name of the institution or a nominee therefor) or with respect to which undivided interests have been created, regardless of whether or not the financial institution is technically a trustee and regardless of whether or not certificates of participation have been issued with respect thereto.

(2) "Trust assets" means all assets held by financial institutions as trustee, administrator, executor, guardian, or in a similar fiduciary capacity but shall not include assets held by the commercial department of the financial institution or "pooled assets" as defined in paragraph (1) of this subsection.

(b) In the event of conflict, this part and not other parts of this article or other articles of this chapter shall control as to the trust assets and the pooled assets of any financial institution in receivership. (Code 1933, § 41A-901, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-221. Status of department in relation to trust and pooled assets.**

(a) Upon taking possession of a financial institution, the department shall hold trust and pooled assets separate from the assets of the financial



institution itself. Trust and pooled assets shall not be available for distribution to depositors, other creditors, or shareholders.

(b) The department as receiver shall have all rights, powers, and duties of the financial institution in regard to trust and pooled assets, including title to the assets and the right to administer them. (Code 1933, § 41A-902, enacted by Ga. L. 1974, p. 705, § 1.)

#### **7-1-222. Jurisdiction of court over trust and pooled assets.**

The principal court shall have exclusive jurisdiction over all matters concerning trust and pooled assets during the period that such assets are held by the department as receiver. (Code 1933, § 41A-903, enacted by Ga. L. 1974, p. 705, § 1.)

#### **7-1-223. Substituted trustee or manager for trust and pooled assets.**

(a) Upon determining to liquidate a financial institution or if it otherwise deems it advisable, the department shall:

(1) With leave of court, transfer all of the trust assets or all of the pooled assets or all of both types of assets to another financial institution which shall assume the responsibilities of the institution in receivership in regard to such assets and act as substituted trustee or manager; or

(2) Give written notice, insofar as the giving of such notice is practicable, to all parties interested in trust or pooled assets that they must within 30 days after the giving of notice apply for the appointment of a substituted trustee or manager to take over the trust or pooled assets. In the event that no such application is made with respect to particular trust assets or pooled assets, the department shall itself apply for appointment of a substituted trustee or manager. Upon application by an interested party or parties or by the department, the court shall appoint as successor trustee or manager that person or corporation best able, in its judgment, to protect the interests of those interested in particular trust or pooled assets. The successor trustees or managers shall have all rights, powers, and duties of the financial institution in regard to the trust or pooled assets committed to them except as these relationships may be modified by the court in accordance with law.

(b) Nothing in this Code section or Code Section 7-1-222 shall be construed to impair any right of the grantor or beneficiaries of trust or pooled assets under applicable instruments or otherwise to secure or provide for the appointment of a substituted trustee or manager. (Code 1933, § 41A-904, enacted by Ga. L. 1974, p. 705, § 1.)

#### **7-1-224. Transfers to substituted trustee or manager without accounting.**

In the event that the department and a substituted trustee or manager agree as to the identity and amount of the trust or pooled assets to be paid



to the substituted trustee or manager and the substituted trustee or manager waives in writing the right to an accounting, then the department may transfer the trust or pooled assets to the substituted trustee or manager and will thereupon (together with the financial institution) be discharged from all liability or responsibility in connection with the trust or pooled assets. (Code 1933, § 41A-905, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-225. Transfers to substituted trustee or manager with accounting; deficiencies.**

Except as authorized by Code Section 7-1-224, the department shall, upon appointment of a substituted trustee or manager, file a full account with the appropriate court setting forth its administration of the trust or pooled assets and shall, upon the order of the court, transfer the trust or pooled assets to the substituted trustee or manager. Whenever the court shall determine that there is a deficiency in regard to the trust or pooled assets or that the financial institution is liable for a surcharge in connection therewith, the amount thereof shall constitute a claim against the financial institution. Such claim shall be filed in the manner of other claims with the principal court within 30 days of a final adjudication with respect to the amount thereof. (Code 1933, § 41A-906, enacted by Ga. L. 1974, p. 705, § 1.)

**PART 10**

**CHANGE IN CONTROL OF FINANCIAL INSTITUTIONS**

**Cross references.** — Requirement that department approve of merger or consolidation of state banks or trust companies, § 7-1-534. Requirement that department approve mergers, consolidations, etc., involving national banks, § 7-1-550 et seq.

**7-1-230. Definitions.**

As used in this part, the term:

(1) "Control" means the power directly or indirectly to direct the management or policies of a financial institution or to vote 25 percent or more of any class of voting securities of a financial institution.

(2) "Person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed in this paragraph. (Code 1933, § 41A-1005, enacted by Ga. L. 1980, p. 1076, § 1.)

**7-1-231. Acquisition of control without permission prohibited.**

It shall be unlawful for a person, acting directly or indirectly or through concert with one or more persons, to acquire control of any financial

institution through a purchase, assignment, pledge, or other disposition of voting stock of such institution, except with the approval of the department or as otherwise permitted by this part. (Code 1933, § 41A-1001, enacted by Ga. L. 1980, p. 1076, § 1.)

**Cross references.** — Requirement that department be notified of change in ownership of or right to vote outstanding shares of bank or trust company which will result in control or change in control of the bank or trust company, § 7-1-236.

**7-1-232. Notice of proposed acquisition required; approval or disapproval by department; judicial review.**

(a) For purposes of this Code section, the term “financial institution” shall include any “bank holding company” as that term is defined in subsection (a) of Code Section 7-1-605.

(b) The department shall be given at least 60 days’ prior written notice of any such proposed acquisition. If the department does not issue a notice disapproving the proposed acquisition within that time or extend the period during which a disapproval may issue for another 30 days, the proposed acquisition shall stand approved. The period for disapproval may be further extended only if the department determines that any acquiring party has not furnished all the information required under Code Section 7-1-233 or that in its judgment any material information submitted is substantially inaccurate. An acquisition may be made prior to expiration of the disapproval period if the department issues written notice of its intent not to disapprove the action.

(c) Within three days after its decision to disapprove any proposed acquisition, the department shall notify the acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for the disapproval.

(d) Within ten days of receipt of such notice of disapproval, the acquiring party may request a hearing on the proposed acquisition. At the conclusion thereof, the department shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

(e) Any person whose proposed acquisition is disapproved after a department hearing under this Code section may obtain review in accordance with Code Section 7-1-90. (Code 1933, § 41A-1002, enacted by Ga. L. 1980, p. 1076, § 1.)

**Cross references.** — Time for giving notice to department of change in control of bank or trust company resulting from change in ownership of or right to vote outstanding shares of the bank or trust company, § 7-1-236.

**7-1-233. Contents of notice.**

Except as otherwise provided by regulation of the department, a notice filed pursuant to Code Section 7-1-232 shall contain the following information:

(1) The identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a state or federal court;

(2) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than 90 days prior to the date of the filing of the notice;

(3) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

(4) The identity, source, and amount of the funds or other considerations used or to be used in making the acquisition and, if any part of these funds or other considerations has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons;

(5) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank, to sell its assets or merge it with any company, or to make any other major change in its business or corporate structure or management;

(6) The identification of any person employed, retained, or to be compensated by the acquiring party or by any person on his behalf to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition and a brief description of the terms of such employment, retainer, or arrangement for compensation;

(7) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition; and

(8) Any additional relevant information in such forms as the department may require by regulation or by specific request in connection with



any particular notice. (Code 1933, § 41A-1003, enacted by Ga. L. 1980, p. 1076, § 1.)

#### **7-1-234. Grounds for disapproving proposal.**

The department may disapprove any proposed acquisition if:

(1) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of banking in any part of this state;

(2) The effect of the proposed acquisition of control in any section of this state may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(3) The financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(4) The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank or in the interest of the public to permit such person to control the bank; or

(5) Any acquiring person neglects, fails, or refuses to furnish the department all the information required by it. (Code 1933, § 41A-1004, enacted by Ga. L. 1980, p. 1076, § 1.)

#### **7-1-235. Part inapplicable to bank holding company transactions.**

This part shall not apply to a transaction subject to Code Sections 7-1-605 through 7-1-608, relating to bank holding companies. (Code 1933, § 41A-1006, enacted by Ga. L. 1980, p. 1076, § 1; Ga. L. 1984, p. 22, § 7.)

#### **7-1-236. Report of change in control.**

Whenever a change occurs in the ownership of or right to vote the outstanding shares of any bank or trust company which will result in the control or a change in the control of the bank or trust company, the president or other officer of such bank or trust company shall, within ten days after knowledge thereof, report such facts to the department. As used in this Code section, the term "control" means the power to direct or cause, directly or indirectly, the direction of the management or policies of the institution. If there is any doubt as to whether a change in the ownership or



voting rights of such shares is sufficient to result in control thereof or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the department. (Code 1933, § 13-2006, enacted by Ga. L. 1965, p. 524, § 1; Code 1933, § 41A-2013, enacted by Ga. L. 1974, p. 705, § 1; Code 1981, § 7-1-442; Code 1981, § 7-1-236, as redesignated by Ga. L. 1986, p. 458, § 3.)

**Cross references.** — Procedure for giving notice to department of proposed change in control of financial institution, § 7-1-230 et seq.

**Editor's notes.** — Ga. L. 1986, p. 458, § 3, redesignated former Code Section 7-1-442 as Code Section 7-1-236.

## PART 11

### COSTS ON JUDICIAL PROCESS

#### **7-1-237. Reimbursement of costs incurred in answering subpoena, garnishment, or order; subpoena to be answered within five days.**

Any financial institution shall be reimbursed by the requesting party for costs which are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data of a customer required or requested to be produced pursuant to a lawful subpoena, summons, warrant, garnishment, attachment, request for the production of documents, or court order where the financial institution is not a party to the action. Except as may otherwise be ordered by a judge of the court issuing the same, a financial institution shall have five business days from service of a subpoena within which to produce any books, papers, or records ordered produced pursuant to such subpoena. In the case of a garnishment or attachment of funds held by the financial institution, such reimbursement may be deducted prior to remission of such funds in response to the garnishment or attachment. Rates and conditions under which reimbursement may be made under this Code section shall be prescribed by regulations of the department. (Code 1981, § 7-1-237, enacted by Ga. L. 1983, p. 602, § 3; Ga. L. 1985, p. 1467, § 1; Ga. L. 1987, p. 805, § 1.)

### RESEARCH REFERENCES

**ALR.** — Bank's liability, under state law, for disclosing financial information concerning depositor or customer, 81 ALR4th 377.

## PART 12

## DEPOSITS OF DECEASED DEPOSITORS

**7-1-239. Payment of large deposits of deceased intestate depositors; deposit of sums held for deceased intestate residents; affidavit included with application for deposit.**

(a) Except as provided in subsection (b) of this Code section and in Article 8 of this chapter, whenever any person dies intestate having a deposit of not more than \$10,000.00 in a financial institution, such financial institution shall be authorized to pay the proceeds of such deposit directly to the following persons:

- (1) To the surviving spouse;
- (2) If no surviving spouse, to the children pro rata;
- (3) If no children or surviving spouse, to the father and mother pro rata; or
- (4) If none of the above, then to the brothers and sisters of the decedent pro rata.

(b) Except as provided in Article 8 of this chapter, if no application for the deposit is made by any person named in subsection (a) of this Code section within 90 days from the death of the intestate depositor, the financial institution shall be authorized to apply not more than \$10,000.00 of the deposit of such deceased depositor in payment of the funeral expenses and expenses of the last illness of such deceased depositor upon the receipt of itemized statements of such expenses and the affidavit of the providers of such services that the itemized statements are true and correct and have not been paid. The financial institution shall pay such expenses in the order received after the death of the depositor.

(c) Payments pursuant to subsections (a) and (b) of this Code section shall operate as a complete acquittal and discharge to the financial institution of liability from any suit, claim, or demand of whatever nature by any heir, distributee, creditor of the decedent, or any other person. Such payment is authorized to be made as provided in this Code section without the necessity of administration of the estate of the decedent or without the necessity of obtaining an order that no administration is necessary.

(d) In any case in which a deceased depositor has more than \$10,000.00 on deposit in a financial institution, such financial institution shall be authorized to pay any amount up to \$10,000.00 to any of the persons authorized by this Code section to receive said deposit. The payment shall only act as a full and final acquittance of liability up to the amount paid by the financial institution and shall not act as a full and final acquittance to the financial institution of all liability.

(e) Notwithstanding any other provisions of law to the contrary, when any person dies intestate as a resident of this state and any person is left in possession of moneys belonging to the decedent, which moneys do not exceed \$10,000.00, such person shall deposit such moneys into a savings account in the name of the decedent in a financial institution located in the area of the decedent's residence. Such account shall be managed in accordance with the signature contract in effect at the financial institution at the time the account is opened. Any financial institution receiving such deposits is authorized to pay the proceeds in accordance with subsections (a), (b), (c), and (d) of this Code section.

(f) As used in this Code section, the term "financial institution" includes any federally chartered financial institution.

(g) Application by any claimant or claimants entitled in this Code section to receive deposits at a financial institution shall include an affidavit by the claimant or claimants which states that they qualify as the proper relation to the decedent as specified in this Code section and that the claimant or claimants know of no other corresponding claimant or claimants to such deposit. The financial institution may rely on a properly executed affidavit in disbursing the funds according to this Code section. (Code 1981, § 7-1-239, enacted by Ga. L. 1983, p. 661, § 1; Ga. L. 1985, p. 1241, § 1; Ga. L. 1986, p. 887, § 1; Ga. L. 1996, p. 848, § 3.)

**Law reviews.** — For article surveying trust and estate law in 1984-1985, see 37 Mercer L. Rev. 443 (1985). For annual survey of law of wills, trusts, and administration of estates,

see 38 Mercer L. Rev. 417 (1986). For annual survey article discussing wills, trusts and administration of estates, see 52 Mercer L. Rev. 481 (2000).

#### **7-1-239.1. Payment of checks or instruments payable to deceased intestate persons; affidavit included with application for payment.**

(a) Whenever any person dies intestate having possession of or a right to possession of a check or other instrument payable to such deceased person and the amount of the check or instrument does not exceed \$10,000.00, the financial institution on which the check or instrument is drawn shall be authorized to accept and redeem the check or instrument by payment to the following persons:

- (1) To the surviving spouse;
- (2) If no surviving spouse, to the children pro rata;
- (3) If no children or surviving spouse, to the father and mother pro rata; or
- (4) If none of the above, then to the brothers and sisters of the decedent pro rata.

(b) If a check or other instrument is payable to more than one person, it may be accepted and redeemed as provided in subsection (a) of this Code section only if it has been endorsed by each payee other than the decedent.



(c) Payments made pursuant to this Code section shall operate as a complete acquittal and discharge to the financial institution of liability from any suit, claim, or demand of whatever nature by any heir, distributee, creditor of the decedent, or any other person. Such payment is authorized to be made as provided in this Code section without the necessity of administration of the estate of the decedent and without the necessity of obtaining an order that no administration is necessary.

(d) As used in this Code section, the term “financial institution” includes any federally chartered financial institution.

(e) Application by any claimant or claimants entitled in this Code section to receive payments of checks or other instruments at a financial institution upon which such instrument is drawn shall include an affidavit by the claimant or claimants which states that they qualify as the proper relation to the decedent as specified in this Code section and that the claimant or claimants know of no other corresponding claimant or claimants to such funds. The financial institution may rely on a properly executed affidavit in disbursing the funds according to this Code section. (Code 1981, § 7-1-239.1, enacted by Ga. L. 1985, p. 1241, § 2; Ga. L. 1996, p. 848, § 4.)

## PART 13

### BANK FEES

#### **7-1-239.5. Fee for instruments drawn on other institutions.**

No financial institution, savings bank, national bank, or state or federal credit union or savings and loan association may charge any fee of any kind to a person or corporation who does not have an account with that institution for cashing a check or other instrument which is payable to such person or corporation and is drawn on the account of another person or corporation with that institution. (Code 1981, § 7-1-239.5, enacted by Ga. L. 1997, p. 572, § 1.)

## JUDICIAL DECISIONS

**Preempted by federal law.** — Since the court found that O.C.G.A. §§ 7-1-239.5 and 7-1-372 were in direct conflict with 12 U.S.C.S. § 24 and 12 C.F.R. § 7.4002(a) under the National Bank Act, 12 U.S.C.S.

§ 21 et seq., the state statutes were preempted, and the court granted the bank's Fed. R. Civ. P. 56 motion. *Bank of Am., N.A. v. Sorrell*, 248 F. Supp. 2d 1196 (N.D. Ga. 2002).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Banking Institutions, § 712.



## ARTICLE 2

## BANKS AND TRUST COMPANIES

**Law reviews.** — For survey article on business associations, see 34 Mercer L. Rev. 13 (1982).

## OPINIONS OF THE ATTORNEY GENERAL

**Investment programs offered jointly by banks and brokerage firms.** — A brokerage firm is not prohibited, by virtue of O.C.G.A. Art. 2, Ch. 1, T. 7 and O.C.G.A. § 7-1-241, from offering, in conjunction with a bank,

an investment program whereby the brokerage permits customers to maintain special accounts and receives and transmits money in connection with such accounts. 1981 Op. Att'y Gen. No. 81-59.

## RESEARCH REFERENCES

**ALR.** — Bank to which paper is sent for collection of principal or interest as agent of obligor, 55 ALR 1168.

Effect of appointment of conservator for bank, 91 ALR 234; 92 ALR 1258; 107 ALR 1431.

Legal questions presented by the reopening of closed bank, 99 ALR 1217.

State banks, insurance companies, or building and loan associations, which are members of federal reserve bank or similar federal agency, or national banks, as within state social security or Unemployment Compensation Act, 165 ALR 1250.

## PART 1

## GENERAL MATTERS

**Cross references.** — Limitations on legislature's powers, Ga. Const. 1983, Art. III, Sec. VI, Para. V. Secretary of State corporations, Ch. 4, T. 14. Forgery and criminal issuance of bad checks, § 16-9-1 et seq. Criminal penalties for illegal use of credit cards, bank services cards, etc., § 16-9-30 et seq. Bond requirements for banks and trust com-

panies acting as guardian of property, § 29-4-16. Authority of notaries public who are officers, employees, etc., of banks, etc., to take acknowledgment of any party to any written instrument executed to or by such bank, etc., § 45-17-12. Appointment of banks and trust companies as state depositories, § 50-17-50 et seq.

## RESEARCH REFERENCES

**ALR.** — Liability of bank which credits paper payable to a corporation to the personal credit of corporate officer who indorsed it, and pays out the proceeds on the latter's personal checks, 9 ALR 346.

Duty and liability of bank under agreement to remit money or establish credit, 27 ALR 1488; 45 ALR 1052; 69 ALR 673.

When bank deemed insolvent, or "hopelessly" insolvent, in civil cases, 85 ALR 811.

Statute regulating banks and trust compa-

nies as special or class legislation, or as denying the equal protection of the laws, 111 ALR 140.

Stipulation relieving bank from, or limiting its liability for disregard of, stop-payment order, 1 ALR2d 1155.

Admissibility, in negligence action against bank by depositor, of evidence as to custom of banks in locality in handling and dealing with checks and other items involved, 8 ALR2d 446.

Bank's liability for breach of implied contract of good faith and fair dealing, 55 ALR4th 1026.

Bank's liability to customer for imposing allegedly excessive service charges, 73 ALR4th 1028.

**7-1-240. Powers and restrictions applicable when acting as bank and trust company.**

Any financial institution authorized by law to act as both a bank and a trust company shall enjoy and be subject to the powers and restrictions of a bank of its type in regard to its banking activities and in like manner shall enjoy and be subject to the powers and restrictions of a trust company in regard to its trust activity. With respect to general corporate matters not identified with either banking or trust functions, it shall have the privileges and restrictions of a bank of its type. (Code 1933, § 41A-1101, enacted by Ga. L. 1974, p. 705, § 1.)

**Law reviews.** — An Argument Evaluating Price Controls on Bank Credit Cards in Light of Certain Reemerging Common Law Doctrines, see 9 Ga. St. U.L. Rev. 797 (1993).

An Economic Perspective on Interest Rate Limitations, see 9 Ga. St. U.L. Rev. 821 (1993).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 597 et seq.

**ALR.** — Power of banking corporation to loan money for others, 33 ALR 597.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 625, 633.

**7-1-241. Restrictions on engaging in banking business.**

(a) No person or corporation may lawfully engage in this state in the business of banking or receiving money for deposit or transmission or lawfully establish in this state a place of business for such purpose, except a bank, a national bank, a credit union to the extent provided in Article 3 of this chapter, a licensee engaged in selling checks to the extent permitted by Article 4 of this chapter, an international banking agency to the extent provided in Article 5 of this chapter, a building and loan association to the extent provided in Article 7 of this chapter, or a savings and loan association to the extent provided by the laws of the United States.

(b) None of the following shall be deemed to be engaged in the business of receiving money for deposit or transmission within the meaning of subsection (a) of this Code section:

(1) A club or hotel to the extent it receives money from members or guests for temporary safekeeping;

(2) An express, steamship, or telegraph company to the extent it receives money for transmission;

(3) An attorney at law, real estate agent, fiscal agent, insurance company, utility company, or any other person or corporation to the extent he or she or it receives and transmits money solely as an incident to a business or profession not governed by this chapter;

(4) Persons or corporations engaged in the business of cashing checks, dispensing cash through credit or debit card activated electronic devices, or recording of financial transactions resulting from and initiated at the point of the sale of goods or services; provided, however, no such person or corporation shall receive deposits except as provided in Code Section 7-1-603 or otherwise engage in the business of banking; or

(5) A securities broker or dealer registered pursuant to the provisions of 15 U.S.C. Section 78o or Code Section 10-5-3 to the extent that such securities broker or dealer:

(A) Sells certificates of deposit or interest in certificates of deposit or other deposit instruments issued by a bank or savings association, provided such securities broker or dealer fully and fairly discloses at the time of solicitation and confirmation whether or not federal deposit insurance is available for that deposit instrument;

(B) Purchases certificates of deposit or other deposit instruments issued by a bank or savings association for the account of the customer of such securities broker or dealer, provided such instruments are registered in the name of the customer or the custodian of such customer on the books or other records of the issuing bank or savings association; or

(C) Holds customer funds incidental to the purchase and sale of securities on behalf of such customer.

(c) The department is authorized to promulgate regulations and establish policy, consistent with the objectives of this chapter, which objectives include for the purposes of this Code section providing for appropriate competition between financial institutions and other financial organizations and protection of the interests of depositors, and to further define, restrict, or require registration of entities which provide financial products and services to the citizens of this state via the Internet, other on-line access to financial products and services, or alternate methods of delivery which differ from geographically based banking. (Ga. L. 1919, p. 135, art. 1, § 4; Code 1933, § 13-204; Ga. L. 1960, p. 1170, § 1; Ga. L. 1966, p. 691, § 1; Code 1933, § 41A-1102, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1985, p. 258, § 3; Ga. L. 1986, p. 458, § 4; Ga. L. 1990, p. 301, § 1; Ga. L. 1997, p. 485, § 10; Ga. L. 2004, p. 631, § 7.)

**The 2004 amendment**, effective May 13, 2004, part of an Act to revise, modernize, and correct the Code, substituted “15 U.S.C. Section 78o” for “15 U.S.C. 78o” in para-

graph (b)(5) and substituted “depositors, and to further define” for “depositors, to further define” in the middle of subsection (c).



## OPINIONS OF THE ATTORNEY GENERAL

**A foreign state savings and loan association may not offer and sell certificates of deposit in Georgia through one or more broker-dealers located in Georgia.** 1983 Op. Att'y Gen. No. 83-23.

**"Business of banking" construed.** — As used in O.C.G.A. § 7-1-241 "the business of banking" is not a separate concept perhaps extending into areas beyond the business of receiving money for deposit or transmission. Rather, it is the receipt of money for deposit or transmission which defines the business of banking for purposes of the Georgia law. 1981 Op. Att'y Gen. No. 81-59.

**Activities reserved exclusively to regulated financial institutions.** — Some activities, such as the lending of funds, while properly engaged in by banks and other regulated financial institutions, are not reserved exclusively to them. Under Georgia law the only functions which are prohibited to persons and corporations in general are the receipt of deposits and the transmission of funds. 1981 Op. Att'y Gen. No. 81-59.

**Automated teller operations limited to financial institutions.** — A nonfinancial institution may not establish and operate on its own behalf an unmanned automated teller facility which provides cash withdrawal services. 1985 Op. Att'y Gen. No. 85-2.

**Restriction on renting of, or accepting deposits for, safe deposit boxes.** — No person or entity, other than those specifically excepted by former Code 1933, § 41A-1102 (see O.C.G.A. § 7-1-241), may lawfully engage in business of renting safe deposit boxes or receptacles for purpose of receiving money, or may accept deposits of money in such facilities. 1980 Op. Att'y Gen. No. 80-88.

**Lockbox operations.** — An out-of-state bank may not use a lockbox operator as a conduit for deposit-taking in Georgia; however, the operation of a lockbox in and of itself does not constitute engaging in the business of banking. 1985 Op. Att'y Gen. No. 85-3.

The operation of a lockbox in compliance with Department of Banking and Finance Proposed Rule 80-7-1-.06 is permissible under Georgia law. 1985 Op. Att'y Gen. No. 85-43, affirming the validity of 1985 Op. Att'y Gen. No. 85-3.

**Investment motive removes deposits from category of deposit which may be accepted pursuant to former Code 1933, § 41A-1102 (see O.C.G.A. § 7-1-241).** 1980 Op. Att'y Gen. No. 80-108.

**Investment programs offered jointly by banks and brokerage firms.** — A brokerage firm is not prohibited, by virtue of O.C.G.A. Art. 2, Ch. 1, T. 7 and O.C.G.A. § 7-1-241, from offering, in conjunction with a bank, an investment program whereby the brokerage permits customers to maintain special accounts and receives and transmits money in connection with such accounts. 1981 Op. Att'y Gen. No. 81-59.

The actions of a bank, participating with a brokerage in offering a particular type of investment program, do not constitute the business of banking in violation of O.C.G.A. § 7-1-241 or § 7-1-604. 1981 Op. Att'y Gen. No. 81-59.

**Programs proposed to be offered by a brokerage firm,** which would be directly involved in soliciting funds from the public primarily for the purpose of facilitating the making of deposits and the earning of interest would be prohibited by O.C.G.A. § 7-1-241 (a). 1988 Op. Att'y Gen. No. 88-10.

**Issuance by corporations of debt securities redeemable by check.** — Arrangement by which business corporation would receive money from individuals and in return issue to the individuals its debt securities redeemable by negotiable checks, would involve "receiving deposits" within meaning of O.C.G.A. § 7-1-4 (7), and only persons or entities authorized to engage in banking business by O.C.G.A. § 7-1-241 may lawfully engage in such arrangements. 1982 Op. Att'y Gen. No. 82-68.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 20.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 6, 7.



**ALR.** — Power of banking corporation to loan money for others, 33 ALR 597.

Duty and liability of bank under agreement to remit money or establish credit, 27 ALR 1488; 45 ALR 1052; 69 ALR 673.

Licensing and regulation of business of transmitting funds to foreign countries, 94 ALR2d 496.

### **7-1-242. Restriction on corporate fiduciaries.**

(a) No corporation, partnership, or other business association may lawfully act as a fiduciary in this state except:

(1) A financial institution authorized to act in such capacity pursuant to the provisions of Georgia law;

(2) A trust company;

(3) A national bank or a state bank lawfully doing a banking business in this state and authorized to act as a fiduciary under the laws of the United States or another state;

(4) A savings bank or savings and loan association lawfully doing a banking business in this state and authorized to act as a fiduciary under the laws of the United States or another state;

(5) Attorneys at law licensed to practice in this state, whether incorporated as a professional corporation or otherwise;

(6) An investment adviser registered pursuant to the provisions of 15 U.S.C. Section 80b-3 or Code Section 10-5-3, provided this exception shall not authorize an investment adviser to act in any fiduciary capacity subject to the provisions of Title 53, relating to wills, trusts, and the administration of estates; or

(7) A securities broker or dealer registered pursuant to the provisions of 15 U.S.C. Section 78o or Code Section 10-5-3 acting in such fiduciary capacity incidental to and as a consequence of its broker or dealer activities.

(b) Acting as a fiduciary for purposes of this Code section includes but is not limited to:

(1) Accepting or executing trusts or otherwise acting as a trustee;

(2) Administering real or tangible personal property located in Georgia or elsewhere. For the purposes of this paragraph, “administer” means to possess, purchase, sell, lease, insure, safekeep, manage, or otherwise oversee; and

(3) Acting pursuant to a court order as personal representative, executor, or administrator of the estate of a deceased person or as guardian or conservator for a minor or incapacitated person.

(c) Nothing in this chapter shall be construed to repeal or to change Part 2 of Article 16 of Chapter 12 of Title 53, dealing with foreign trustees,

or Part 3 of Article 16 of Chapter 12 of Title 53, dealing with certain foreign corporations acting as fiduciaries, or any other statutes or rules of law on such subjects. (Code 1933, § 109-302.1, enacted by Ga. L. 1973, p. 525, § 1; Code 1933, § 41A-1103, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1980, p. 972, §§ 5, 6; Ga. L. 1981, p. 1366, § 4; Ga. L. 1990, p. 301, § 2; Ga. L. 1991, p. 810, § 2; Ga. L. 1998, p. 795, § 13; Ga. L. 2004, p. 631, § 7.)

**The 2004 amendment**, effective May 13, 2004, part of an Act to revise, modernize, and correct the Code, inserted "Section" following "U.S.C." in paragraphs (a)(6) and (a)(7).

**Cross references.** — Substitution of parties to contracts generally, § 13-4-20. Impossibility as excuse for nonperformance, § 13-4-21.

## JUDICIAL DECISIONS

**Legislative intent.** — It was not the intent of General Assembly in enacting former Code 1933, § 41A-1103 (see O.C.G.A. § 7-1-242) to repeal former Code 1933,

§ 22-5503 (see O.C.G.A. § 14-5-42). *McGonagle v. Duncan*, 244 Ga. 308, 260 S.E.2d 44 (1979).

## OPINIONS OF THE ATTORNEY GENERAL

**Applicability to facilities conducting only trust business.** — Branch banking and bank holding company restrictions apply to bank facilities conducting only trust business. 1980 Op. Att'y Gen. No. 80-156.

**State-chartered credit unions not custodians of retirement funds.** — State-chartered credit unions may not act as custodian or trustee for retirement funds under the Employee Retirement Income Security Act of 1974. 1975 Op. Att'y Gen. No. 75-56.

**Applicability to investment advisors.** — The term "fiduciary" as used in O.C.G.A. § 7-1-242 includes the specific persons or entities identified in O.C.G.A. § 7-1-4(20) as well as other persons or entities who take

possession of or title to assets of others or exercise control over such assets for the purpose of managing those assets. This definition of fiduciary and the restrictions of O.C.G.A. § 7-1-242 would also apply to corporate investment advisers who, in addition to offering advice for sale, also take custody of or exercise control over customers' assets for the purpose of administering those assets, but this opinion does not address the issue of whether the restrictions of O.C.G.A. § 7-1-242 apply to a securities dealer who, incidental to the trading of securities, may hold uninvested client funds and securities subject to customer instruction and directives. 1989 Op. Att'y Gen. 89-25.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 20, 25.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 230, 231.

## 7-1-243. Restrictions on banking and trust nomenclature.

(a) Except as provided in subsection (c) of this Code section, no person or corporation except a bank, a national bank, or a corporation lawfully owning the majority of the voting stock of a bank or national bank or a subsidiary of such bank, national bank, or corporation shall use the words "bank," "banker," "banking company," "banking house," or any other similar name indicating that the business done is that of a bank upon any

sign at its place of business or elsewhere, or upon any of its letterheads, billheads, blank checks, blank notes, receipts, certificates, circulars, advertisements, or any other written or printed matter.

(b) Except as provided in subsection (c) of this Code section, no person or corporation except:

(1) A corporation lawfully authorized to exercise trust powers or any subsidiary thereof;

(2) A corporation lawfully owning the majority of the voting stock of any corporation authorized to exercise trust powers, or any subsidiary of such owner corporation;

(3) An enterprise whose structure is in the nature of a trust where the trustees include a corporation lawfully authorized to exercise trust powers in this state; or

(4) An eleemosynary institution

shall use the words “trust” or “trust company” or any similar name indicating that the business done is that of a trust company upon any sign at its place of business or elsewhere, or upon any of its letterheads, billheads, blank checks, blank notes, receipts, certificates, circulars, advertisements, or any other written or printed matter.

(c) Nothing in this Code section shall be construed to:

(1) Prevent the use of the words “banks,” “banker,” “banking,” “banker’s,” “trust,” or any similar word in a context clearly not purporting to refer to a banking or a trust business or to a business primarily engaged in the lending of money, underwriting or sale of securities, acting as a financial planner, financial service provider, investment or trust adviser, or acting as a loan broker;

(2) Prohibit advertisement in media distributed in or transmitted into this state by persons or corporations lawfully engaged in the banking or trust business outside of this state; or

(3) Prevent any person or corporation from continuing to use its name legally in use on April 1, 1989.

(d) The department shall advise the Secretary of State of any corporate name or proposed corporate name it deems to be inconsistent with this Code section. (Ga. L. 1927, p. 344, §§ 1, 2; Code 1933, § 109-502; Ga. L. 1974, p. 463, § 1; Code 1933, § 41A-1104, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1978, p. 1717, § 3; Ga. L. 1981, p. 1366, § 5; Ga. L. 1989, p. 1257, § 2; Ga. L. 1999, p. 674, § 3.)

**Cross references.** — Further regulations pertaining to use of names by financial institutions, § 7-1-130.



## OPINIONS OF THE ATTORNEY GENERAL

**Open-end investment fund not engaged in banking may use term "trust".** — Where open-end investment fund is not engaged in banking business in this state, use of term "trust" does not violate former Code 1933, § 41A-1104 (see O.C.G.A. § 7-1-243). 1975 Op. Att'y Gen. No. 75-92.

**Name did not indicate that trust company business was conducted.** — The use of the

name Fidelity Daily Income Trust by duly organized business trust does not indicate that business being done by fidelity is that of a "trust company"; therefore, fidelity is not in violation of former Code 1933, § 41A-1104 (see O.C.G.A. § 7-1-243). 1975 Op. Att'y Gen. No. 75-92.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 182.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 42.

**ALR.** — Modern status of the Massachusetts or business trust, 88 ALR3d 704.

### 7-1-244. Deposit insurance requirements; public notices when deposits not properly insured.

(a) Every bank shall obtain and maintain deposit insurance satisfactory to the department; provided, however, that banks which have had their deposit insurance withdrawn or canceled may, in the discretion of the department, continue to accept deposits; provided, further, such banks shall within six months after such withdrawal or cancellation of insurance obtain deposit insurance, satisfactory to the department, written by an insurance company authorized to transact business in this state or by the Federal Deposit Insurance Corporation. The department may, in its discretion, for cause shown, extend the time limitation in which deposit insurance must be obtained.

(b) Deposit insurance required to be obtained in subsection (a) of this Code section need not be in excess of amounts insured by the Federal Deposit Insurance Corporation at the time the insurance is obtained; but wherever the insurance coverage is, in the opinion of the department, less than amounts insured by the Federal Deposit Insurance Corporation, the bank shall be required to post at a conspicuous place near the entrance of such bank a sign in boldface print, in letters at least four inches high, which states "Deposits Not Insured" or "Deposits Insured Up To (insert amount of deposit insurance)." Such wording shall also follow the name of the bank wherever it is written or printed and shall be posted in writing which is easily legible in letters at least one inch high at each window or desk receiving deposits. (Ga. L. 1966, p. 692, § 17; Code 1933, § 41A-1105, enacted by Ga. L. 1974, p. 705, § 1.)

**Cross references.** — Restrictions on advertising for sale instruments purporting to be insured or guaranteed in manner compara-

ble to insured deposit or shared account when such instrument does not in fact possess comparable insurance coverage,



§ 7-1-133. For similar provisions as to deposit insurance requirements for credit unions, § 7-1-666. For similar provisions per-

taining to building and loan association deposit insurance requirements, § 7-1-797.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 47, 56, 57.

11 Am. Jur. 2d, Banks and Financial Institutions, § 1103.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 24.

**ALR.** — Insurance of bank or trust company against loss by burglary or robbery as covering contents of safety deposit boxes rented to customers, 30 ALR 623.

Liability on bond for security of public funds deposited in banks as affected by form of transaction, or nature or validity of deposit, 65 ALR 798.

Purchaser or holder of draft, cashier's check or certified check as a depositor

within statutes relating to guaranty or insurance of deposits or deposit liability, 111 ALR 228.

Circumstances under which federal appellate court will allow Federal Deposit Insurance Corporation (FDIC) or Resolution Trust Corporation (RTC) to raise on appeal issues not raised at trial involving financial institution put in receivership or conservatorship after trial, 120 ALR Fed. 469.

Determination, under 12 USCS § 1821(f), of disputes concerning insured nature of deposits as entitled to Federal Deposit Insurance Protection, 120 ALR Fed. 485.

## PART 2

### GENERAL POWERS OF BANKS AND TRUST COMPANIES

### RESEARCH REFERENCES

**ALR.** — Duty of bank when several checks which, in the aggregate, exceed the depositor's balance, are presented at the same time, 26 ALR 1486; 66 ALR 404; 109 ALR 858; 114 ALR 518.

Liability of bank for loss of liberty bonds and war savings stamps, 40 ALR 899.

Right of savings bank to liquidate voluntarily and close business, 69 ALR 1255.

Liability for interest or profits on funds of estate deposited in bank or trust company which is itself executor, administrator, trustee, or guardian, or in which executor, etc., is interested, 88 ALR 205.

Statute regulating banks and trust companies as special or class legislation, or as denying the equal protection of the laws, 111 ALR 140.

### 7-1-260. General corporate powers.

Subject to restrictions contained in this chapter or in its articles, a bank or trust company shall have the power:

(1) To have perpetual duration unless a limited period of duration is stated in its articles. Each bank or trust company existing on April 1, 1975, shall have perpetual duration unless its articles are amended under this chapter to provide for a limited period of duration;

(2) To sue and be sued, complain and defend in its corporate name;

(3) To have a corporate seal, which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced;

(4) To adopt, alter, and repeal bylaws pursuant to the procedures of Code Section 7-1-481 containing provisions for the regulation and management of affairs of the institution not inconsistent with law or its articles;

(5) To elect or appoint and remove officers and agents of the institution and to define their duties and fix their compensation;

(6) To make contracts;

(7) To make, irrespective of corporate benefit, loans, investments, contributions, and donations for community development and the promotion of the public welfare or for other religious, charitable, scientific, educational, hospital, civic, or similar purposes and in time of war or other national emergency in aid of the national effort with respect thereto;

(8) At the request or direction of the United States government or any public body thereof, to transact lawful business in time of war or national emergency in aid of the national effort in connection therewith;

(9) To procure, for its benefit, insurance on the life of any of its directors, officers, or employees or any other person whose death might cause financial loss to the bank or trust company; or, pursuant to any contract lawfully obligating the bank or trust company as guarantor or surety, on the life of the principal obligor; and

(10) To reimburse and indemnify litigation, liabilities, and expenses of directors, officers, and employees pursuant to agreements with them or otherwise and to purchase and maintain liability insurance for their benefit unless otherwise limited pursuant to this chapter. (Ga. L. 1898, p. 78, § 3; Civil Code 1910, § 2817; Ga. L. 1917, p. 56, § 1; Ga. L. 1919, p. 135, art. 17, § 1; Ga. L. 1920, p. 76, § 1; Code 1933, §§ 13-1801, 109-201; Code 1933, § 41A-1201, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 946, § 67; Ga. L. 1989, p. 1257, § 3; Ga. L. 1995, p. 673, § 11.)

**Editor's notes.** — The amendment to this Code section by Ga. L. 1989, p. 946, § 67, was superseded by the amendment by Ga. L. 1989, p. 1257, § 3, which was enacted later.

## JUDICIAL DECISIONS

**Operation of a general insurance agency does not qualify as an "incidental power"** as it is not convenient or useful in connection with one of the bank's activities established pursuant to exercise of its express powers. The business of a general insurance agency encompasses selling various types of insurance to the general public. In operating such an agency, a bank would be engaged in

an independent, profit-seeking venture unrelated to its express powers. *Independent Ins. Agents of Ga., Inc. v. Department of Banking & Fin.*, 248 Ga. 787, 285 S.E.2d 535 (1982).

**Cited** in *Department of Banking & Fin. v. Independent Ins. Agents of Ga., Inc.*, 158 Ga. App. 556, 281 S.E.2d 265 (1981).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's note.** — In light of the similarity of the provisions, opinions under former Code 1933, §§ 13-1801 and 13-1802 are included in the annotations for this section.

**Banking corporations of this state may not make political contributions.** 1970 Op. Att'y Gen. No. 70-144 (decided under former Code 1933 §§ 13-1801 and 13-1802).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 597 et seq. 18B Am. Jur. 2d, Corporations, §§ 1990-2008, 2085.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 230, 231.

**ALR.** — Right of setoff by or against bank or trust company as affected by division of its business into departments, 81 ALR 1508.

Power of bank or trust company with respect to assistance of or cooperation with another bank financially embarrassed, 84 ALR 1425.

Trust company's agreement to repay in cash principal of trust fund investment as ultra vires, 96 ALR 453.

Dealings between bank or trust company and itself acting as executor, administrator, or trustee, 112 ALR 780.

Power of savings bank or similar institution to provide checking facilities or negotiable orders of withdrawal (NOW) to customers, 64 ALR3d 1314.

### 7-1-261. Additional operational powers.

Banks and trust companies shall, in addition, have the power:

(1) To act as agent of the United States or any public body thereof for the sale or issue of bonds, notes, or other obligations of the United States, or those for which the full faith and credit of the United States is pledged, and to grant security interests in its assets for the faithful performance of its duties as agent;

(2) To receive for safekeeping or to rent out receptacles or safe-deposit boxes for the deposit of papers and other personal property;

(3) To grant security interests in their assets for borrowings authorized by this chapter and to dispose of their assets in the same manner as corporations generally;

(4) To give bond in any proceeding in any court in which they are a party or upon any appeal in any such proceeding and to secure such bond;

(5) To acquire and hold real property to the extent permitted by Code Sections 7-1-262, 7-1-282, and 7-1-286;

(6) To acquire and hold stocks and investment securities subject, in the case of banks, to the restrictions of Code Sections 7-1-287 and 7-1-288 and, in the case of trust institutions, to the restrictions of Code Section 7-1-312;

(7) To acquire and hold personal property necessary in the exercise of powers conferred by this chapter;



(8) To acquire and hold any property in order to avoid loss on an evidence of indebtedness, agreement for the payment of money, or an investment security previously acquired lawfully and in good faith subject to the restrictions of Code Section 7-1-263;

(9) To hold property lawfully held on April 1, 1975, irrespective of any restriction or limitation in this chapter, subject to the inclusion of any such property in any computation of limitation on the acquisition of property of like character under this chapter;

(10) To enter into an agency relationship as defined in Code Section 7-1-4 subject to restrictions and qualifications prescribed by regulations of the department; and

(11) To have and exercise all powers necessary, convenient, or incidental to effect any and all purposes for which the bank or trust company and its subsidiaries and affiliates is organized, provided that the commissioner may establish approval procedures by regulation for additional powers as needed to satisfy the objectives of this chapter. Powers shall include but not be limited to: sale of securities, annuities, and other investment products upon the order of and for the account of its customers, subject to applicable federal or state securities requirements; sale of insurance subject to state insurance laws, regulations, and licensing requirements, applicable federal laws, and departmental regulations and policies; sale or lease of excess computer capacity; expansion of customer services through the use of technology; other powers including those bank and trust powers authorized to subsidiaries of the bank or trust company pursuant to subparagraph (c)(2)(F) of Code Section 7-1-288; and other such powers to carry on banking, trust, or other activities determined by the commissioner to be financial in nature or incident or complementary to such financial activities and consistent with the objectives of this chapter and the regulations of the department. (Ga. L. 1898, p. 78, § 3; Civil Code 1910, § 2817; Ga. L. 1917, p. 56, § 1; Ga. L. 1919, p. 135, art. 17, § 1; Ga. L. 1920, p. 76, § 1; Code 1933, §§ 13-1801, 109-201; Code 1933, § 13-1802, enacted by Ga. L. 1968, p. 1044, § 1; Code 1933, § 41A-1202, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1983, p. 602, § 4; Ga. L. 1989, p. 1249, § 2; Ga. L. 1995, p. 673, § 12; Ga. L. 1996, p. 6, § 7; Ga. L. 1997, p. 485, § 11; Ga. L. 2000, p. 174, § 4.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1997, commas were deleted preceding and following “and its subsidiaries and affiliates” in the first sentence in paragraph (11).

**Law reviews.** — For survey article on insurance, see 34 Mercer L. Rev. 177 (1982).



## JUDICIAL DECISIONS

**Section 33-3-23 and paragraph (10), (now paragraph (11)), must be construed in pari materia.** — O.C.G.A. § 33-3-23 and O.C.G.A. § 7-1-261 (10), (now paragraph (11)) were enacted at same legislative session and relate to same subject matter — permissible scope of bank's powers — and must, therefore, be construed in *pari materia*. Department of Banking & Fin. v. Independent Ins. Agents of Ga., Inc., 158 Ga. App. 556, 281 S.E.2d 265 (1981), rev'd on other grounds, 248 Ga. 787, 285 S.E.2d 535 (1982).

**Approval of proposed exercises of incidental powers guided by § 7-1-3(a)(6).** — O.C.G.A. § 7-1-261 establishes legislative intent that state banks be authorized to exercise "incidental powers" and delegates authority to approve such powers to the commissioner, who shall be guided in this determination by statutory objective stated in O.C.G.A. § 7-1-3(a)(6) of making state banks competitive with national banks. Department of Banking & Fin. v. Independent

Ins. Agents of Ga., Inc., 158 Ga. App. 556, 281 S.E.2d 265 (1981), rev'd on other grounds, 248 Ga. 787, 285 S.E.2d 535 (1982).

**General words following list of particulars are construed to embrace only objects similar in nature to particulars.** Independent Ins. Agents of Ga., Inc. v. Department of Banking & Fin., 248 Ga. 787, 285 S.E.2d 535 (1982).

**Operation of general insurance agency does not qualify as "incidental power"** as it is not convenient or useful in connection with one of bank's activities established pursuant to exercise of its express powers. The business of a general insurance agency encompasses selling various types of insurance to the general public. In operating such an agency, a bank would be engaged in an independent, profit-seeking venture unrelated to its express powers. Independent Ins. Agents of Ga., Inc. v. Department of Banking & Fin., 248 Ga. 787, 285 S.E.2d 535 (1982).

## OPINIONS OF THE ATTORNEY GENERAL

**Sale of data processing equipment and technology services** by bank to other banks is authorized. 1974 Op. Att'y Gen. No. 74-121.

**Banking corporations of this state may not make political contributions.** 1970 Op. Att'y Gen. No. 70-144 (decided under former Code 1933, §§ 13-1801 and 13-1802).

**State trust company may establish foreign branch office** for purpose of developing new international business. 1970 Op. Att'y Gen. No. 70-59.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 597 et seq. 18B Am. Jur. 2d, Corporations, §§ 1990-2008, 2085.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 230, 231.

**ALR.** — Levy upon or garnishment of contents of safety deposit box, 19 ALR 863; 39 ALR 1215.

Insurance of bank or trust company against loss by burglary or robbery as covering contents of safety deposit boxes rented to customers, 30 ALR 623.

Liability for loss of contents of safe-deposit box, 42 ALR 1304; 133 ALR 279.

Power of bank or trust company with respect to assistance of or cooperation with

another bank financially embarrassed, 84 ALR 1425.

Trust company's agreement to repay in cash principal of trust fund investment as ultra vires, 96 ALR 453.

Power of bank or trust company to create trust out of its securities and sell participation certificates therein, 97 ALR 1182.

Presumption as to ownership of property in safe deposit box, 101 ALR 832.

Dealings between bank or trust company and itself acting as executor, administrator, or trustee, 112 ALR 780.

Power of savings bank or similar institution to provide checking facilities or negotiable orders of withdrawal (NOW) to customers, 64 ALR3d 1314.

**7-1-262. Power to hold real estate; prior approval of acquisitions.**

(a) A bank or trust company may solely or jointly with other persons or corporations acquire and hold such real property as it:

(1) Occupies or intends to occupy primarily for the transaction of its business, the business of any subsidiary or affiliate, or the recreational use of its employees or partly so occupies and partly leases;

(2) Acquires for the purpose of providing parking or other facilities primarily for the use of its tenants, customers, officers, and employees; or

(3) Acquires with others for the purpose of providing data processing facilities or other support services for the bank or trust company or any subsidiary solely or in cooperation with others,

subject to the limitation that the investment of the bank or trust company in all such real property, in all furniture, fixtures, and equipment acquired in connection with any real property owned or leased by the bank or trust company, in all alterations of buildings on real property owned or leased by the bank or trust company, in all shares of corporations organized for the purpose of holding real estate in the categories described above where the bank or trust company or a subsidiary of the bank or trust company owns 25 percent or more of such shares outstanding, in obligations of or for the benefit of such corporations or loans upon the security of the shares of such corporations or, to the extent of the bank's or trust company's pro rata interest, the security of the real estate itself, and in all real estate, furniture, fixtures, or equipment held beyond the limits specified in Code Section 7-1-263 shall not exceed 60 percent of the statutory capital base of the bank or trust company, or such larger amount as may be approved by the department.

(b) All acquisitions of real property for purposes authorized above must be accorded prior written approval by the department in advance of the acquisition except to the extent authorized by regulation. (Ga. L. 1898, p. 78, § 3; Civil Code 1910, § 2817; Ga. L. 1917, p. 56, § 1; Ga. L. 1919, p. 135, art. 19, § 24; Ga. L. 1920, p. 76, § 1; Code 1933, §§ 13-2024, 109-201; Ga. L. 1963, p. 512, § 1; Ga. L. 1972, p. 1242, § 1; Code 1933, § 41A-1203, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 16; Ga. L. 1989, p. 1249, § 3.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 605 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 237.

**7-1-263. Property held to avoid loss.**

A bank or trust company may acquire and hold property for the purpose of avoiding loss as specified in paragraph (8) of Code Section 7-1-261, subject to:

(1) A determination by a majority vote of its directors at least once each year as to the advisability of retaining any such property, provided that no such property may be held for more than five years without the prior written approval of the department; and

(2) Disposition within a period of six months after the date of acquisition or such longer period as the department may approve in writing of shares of its own stock so acquired and of shares of stock of any bank, bank holding company, or trust company held after such acquisition. (Ga. L. 1898, p. 78, § 3; Civil Code 1910, § 2817; Ga. L. 1917, p. 56, § 1; Ga. L. 1919, p. 135, art. 19, §§ 22-24; Ga. L. 1920, p. 76, § 1; Ga. L. 1924, p. 76, § 1; Ga. L. 1927, p. 195, § 10; Code 1933, §§ 13-2022, 13-2023, 13-2024, 109-201; Ga. L. 1946, p. 65, § 1; Ga. L. 1947, p. 501, § 1; Ga. L. 1950, p. 18, § 1; Ga. L. 1951, p. 284, § 1; Ga. L. 1957, p. 275, § 1; Ga. L. 1958, p. 133, § 1; Ga. L. 1959, p. 238, § 1; Ga. L. 1962, p. 95, § 1; Ga. L. 1963, p. 512, § 1; Ga. L. 1965, p. 523, § 1; Ga. L. 1966, p. 590, § 8; Ga. L. 1968, p. 1162, § 1; Ga. L. 1969, p. 976, § 1; Ga. L. 1972, p. 1242, § 1; Code 1933, § 41A-1204, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 6.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 605 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 237.

**ALR.** — Liability of bank for loss of liberty bonds and war savings stamps, 40 ALR 899.

**PART 3****POWERS OF BANKS****RESEARCH REFERENCES**

**ALR.** — Powers of bank president or vice president, 1 ALR 693; 67 ALR 970.

Duty of bank when several checks which, in the aggregate, exceed the depositor's balance, are presented at the same time, 26 ALR 1486.

Power of banking corporation to loan money for others, 33 ALR 597.

Rights of owners of securities deposited in bank, upon its insolvency, 51 ALR 914; 84 ALR 1534; 126 ALR 625.

Right of savings bank to liquidate voluntarily and close business, 69 ALR 1255.

Statute regulating banks and trust companies as special or class legislation, or as denying the equal protection of the laws, 111 ALR 140.

Power of bank officer respecting security or collateral held by bank, 11 ALR2d 1305.



**7-1-280. Major banking powers.**

Subject to restrictions contained in this chapter or in its articles, a bank shall have the power:

- (1) To receive money or commercial paper for deposit and to provide by its rules or by agreement for the terms of withdrawal and interest thereon;
- (2) To act as an agent to collect checks, drafts, and other items of commercial paper and in exercising this power to become a member of a clearing-house and grant security interests in its assets for its qualification therein;
- (3) To lend money and discount or purchase evidence of indebtedness and agreements for the payment of money and to take security title or security interests in real or personal property to secure obligations owing thereunder;
- (4) To service loans made by it or by others whether or not held by the bank;
- (5) To issue, advise, and confirm letters of credit authorizing the beneficiaries thereof to draw upon the bank or its correspondents;
- (6) To receive money for transmission;
- (7) To buy and sell exchange, coin, and bullion; and
- (8) To provide third-party payments services. (Ga. L. 1919, p. 135, art. 17, § 1; Code 1933, § 13-1801; Code 1933, § 41A-1301, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1985, p. 258, § 4; Ga. L. 1986, p. 458, § 5.)

**Cross references.** — Definition of “clearing-house” for purposes of Art. 4, T. 11, the “Uniform Commercial Code,” § 11-4-104. Definition of “collecting bank” for purposes of Art. 4, T. 11, the “Uniform Commercial Code,” § 11-4-105. For provi-

sions of T. 11, the “Uniform Commercial Code,” pertaining to letters of credit generally, § 11-5-101 et seq. Effect of laws relating to regulation of practice of law on power of banks to give advice to customers in matters incidental to banks or banking, § 15-19-52.

**JUDICIAL DECISIONS**

**Operation of general insurance agency does not qualify as “incidental power”** as it is not convenient or useful in connection with one of the bank’s activities established pursuant to exercise of its express powers. The business of a general insurance agency encompasses selling various types of insurance

to the general public. In operating such an agency, a bank would be engaged in an independent, profit-seeking venture unrelated to its express powers. *Independent Ins. Agents of Ga., Inc. v. Department of Banking & Fin.*, 248 Ga. 787, 285 S.E.2d 535 (1982).



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 597 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 230, 231.

**ALR.** — Liability of bank on letter of credit as affected by quality or condition of goods for purchase price of which it is issued, 39 ALR 755.

Liability of collecting bank which accepts something other than cash, 61 ALR 739; 89 ALR 1336.

Misappropriation by agent or employee of bank of proceeds of loan made through him to third person as chargeable to bank or to borrower, 69 ALR 804.

What amounts to a deposit within statute in relation to civil or criminal liability for accepting deposit when bank is unsafe or insolvent, 76 ALR 1320.

Financial statement by borrower as basis of loan or extension of credit, 104 ALR 921.

Dealings between bank or trust company and itself acting as executor, administrator, or trustee, 112 ALR 780.

Power of bank to agree to repurchase real estate mortgage or other securities sold by it, 120 ALR 485.

Noncompliance by bank with statutory provisions relating to loans or discounts as defense to recovery of loan or enforcement of its security, 125 ALR 1512.

Power and capacity of bank to take devise or bequest, 8 ALR2d 454.

Power of savings bank or similar institution to provide checking facilities or negotiable orders of withdrawal (NOW) to customers, 64 ALR3d 1314.

Measure of damages for breach of contract to lend money, 4 ALR4th 682.

Recovery by bank of money paid out to customer by mistake, 10 ALR4th 524.

Bank's liability to real property purchaser for misrepresentation respecting purchaser's obtaining government guaranteed or subsidized loan, 37 ALR4th 773.

## 7-1-281. Participation in federal programs.

Any bank may:

(1) Become a member of the Federal Reserve System and conform to the rules and regulations of that system and the federal reserve bank of which it is a member;

(2) Become an insured bank pursuant to the Federal Deposit Insurance Act and take all action necessary to the maintenance of insured status thereunder;

(3) Apply for and obtain insurance on loans pursuant to national housing legislation. (Ga. L. 1919, p. 135, art. 19, § 38; Code 1933, § 13-2038; Code 1933, § 41A-1302, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 17; Ga. L. 1984, p. 22, § 7.)

**U.S. Code.** — The Federal Deposit Insurance Act, referred to in paragraph (2) of this section, is codified as 12 U.S.C. §§ 1728, 1811 et seq.

## 7-1-282. Direct leasing of personal and real property.

Notwithstanding any other provision of law to the contrary and subject to such regulations as the department may prescribe, a bank may:

(1) Become the owner and lessor of personal property acquired upon the specific request and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property. At the end of any lease, the bank shall, within six months, enter into a new lease with respect to the property or dispose of it. The leasing shall constitute an indebtedness under Code Section 7-1-285 and shall be subject to the lending limitations of such Code section;

(2) Become the owner and lessor of certain public real property and facilities. A bank may purchase or construct a municipal building, school building, or other similar state, local, or other governmental authority facility if, as holder of legal title, such purchase is for the purpose of leasing the facility to a municipality or other public or governmental authority which has the authority to enter into such lease, is authorized to levy taxes or is backed by the taxing authority of another political subdivision, and has the resources sufficient to make lease payments as they come due. The lease agreement must provide that the lessee will become the owner of the building or facility upon the expiration of the lease; and

(3) Become the owner and lessor of real property acquired upon the specific request and for the use of a customer or an affiliate thereof and may incur such additional obligations as may be incidental to becoming an owner and lessor of such property. The lessee, or an affiliate thereof, shall be responsible for any and all construction of buildings or other improvements related to such real property. Any lease with respect to such real property shall provide that the lessee thereof shall be responsible for maintaining the property, insuring the property, and paying real estate taxes related to the property. At the end of any lease, the bank shall, within six months, enter into a new lease with respect to the property or dispose of it. The leasing shall be subject to credit approval by the bank in a manner substantially similar to a loan and shall constitute an indebtedness under Code Section 7-1-285 and shall be subject to the lending limitations of such Code section. The assignment of any purchase contract, or the right to purchase real property thereunder, by the lessee or an affiliate thereof to the bank shall not affect the entitlement of any real estate broker to any real estate brokerage commissions owing upon the sale of such real property. (Ga. L. 1919, p. 135, art. 19, § 22; Code 1933, § 13-2022; Ga. L. 1966, p. 590, § 8; Code 1933, § 41A-1303, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1999, p. 674, § 4; Ga. L. 2000, p. 174, § 5; Ga. L. 2001, p. 4, § 7; Ga. L. 2004, p. 458, § 3.)

**The 2004 amendment**, effective July 1, 2004, deleted “and” at the end of paragraph (1), substituted “; and” for a period at the end of paragraph (2), and added paragraph (3).

**7-1-283. Participations.**

(a) A bank may purchase and may sell participations in:

(1) One or more evidences of indebtedness or agreements for the payment of money, subject to regulations by the department; or

(2) Pools of evidences of indebtedness or agreements for the payment of money, subject to regulations by the department.

(b) The department may prohibit the sale of any type of participation to the public or otherwise not in the usual course of banking business, except as permitted by other provisions of this chapter. (Code 1933, § 41A-1304, enacted by Ga. L. 1974, p. 705, § 1.)

**RESEARCH REFERENCES**

**ALR.** — Power of bank or trust company participation certificates therein, 97 ALR 1182.  
to create trust out of its securities and sell

**7-1-284. Acceptances.**

(a) A bank may accept drafts upon it having not more than nine months' sight to run arising out of transactions involving:

(1) The import or export of goods;

(2) The domestic shipment of goods, if secured by documents of title covering such goods; or

(3) The storage of readily marketable staples, if secured by documents of title covering such staples.

(b) The aggregate amount of acceptances under subsection (a) of this Code section shall not at any time exceed, for all such acceptances on behalf of one customer, 15 percent of the statutory capital base of the bank, exclusive of any acceptance secured by documents of title or other security growing out of the same transaction as the acceptance.

(c) In addition, a bank may, with the prior approval of the department, accept drafts having not more than three months' sight to run drawn upon it by banking institutions or bankers in foreign countries or in dependencies or insular possessions of the United States for the purpose of creating dollar exchange as required in an aggregate amount which shall not at any time exceed:

(1) For all such acceptances on behalf of a single banking institution or banker, 10 percent of the statutory capital base;

(2) For all such acceptances, 50 percent of the statutory capital base, provided that the department may, by regulation, impose additional



restrictions on the acceptance of drafts under this subsection. (Ga. L. 1919, p. 135, art. 19, § 20; Code 1933, § 13-2020; Code 1933, § 41A-1305, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 275, § 1; Ga. L. 1981, p. 1366, § 7; Ga. L. 1983, p. 602, § 5.)

**Cross references.** — Effect of proffered acceptance of draft by drawee which varies draft as presented, § 11-3-412. Warehouse

receipts, bills of lading, and other documents of title, § 11-7-101 et seq.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Bills and Notes, § 381 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 238.

### 7-1-285. Limits on obligations of one person or corporation.

(a) A bank shall not at any time:

- (1) Make loans to any one person or corporation; or
- (2) Have obligations owing to it from any one person or corporation as a result of purchasing or discounting evidences of indebtedness or agreements for the payment of money,

where the aggregate of said loans and obligations together exceeds 15 percent of the statutory capital base of the bank unless each loan, discount, or purchase transaction in excess of said 15 percent limit is approved in advance by the board of directors or a committee authorized to act for it.

(b) Except as provided in subsection (c) of this Code section, a bank shall not directly or indirectly make loans to any one person or corporation which in aggregate exceed 15 percent of the statutory capital base of the bank unless the entire amount of such loans is secured by good collateral or other ample security and does not exceed 25 percent of the statutory capital base. Except as otherwise indicated in subsection (c) of this Code section, the purchase or discount of agreements for the payment of money or evidences of indebtedness shall be regarded as indirect loans to the person or corporation receiving the proceeds of such transactions. In estimating loans to any individual person, all amounts loaned to firms and partnerships of which he is a member shall be included.

(c) The limitations of subsection (b) of this Code section shall not apply to:

- (1) Obligations arising from the purchase or discount of drafts drawn in good faith against actually existing values or commercial or business paper actually owned by the person negotiating the paper to the extent of 25 percent of the statutory capital base of the bank;
- (2) Obligations arising from the bona fide purchase of commercial or business paper, subject to restrictions which the department may impose



by regulation, taken in sale or service transactions incident to a business where the party to whom the goods or services are provided is obligated on the paper;

(3) Obligations in the form of bona fide loans upon the security of agricultural, manufactured, or industrial products or livestock (or documents of title covering such property) for which there is a ready sale in open market, provided no more than 80 percent of the market value of such products is loaned or advanced thereon, the bank has the right to demand additional collateral to maintain this ratio and does so maintain it, and the bank's interest in such collateral is fully protected by insurance against loss by fire and other standard hazards; and provided, further, that such obligations shall qualify for exemption for not more than ten months if secured by nonperishable staples and for not more than six months if secured by frozen or refrigerated staples;

(4) Obligations of and obligations guaranteed by:

(A) The United States;

(B) The State of Georgia or a public body thereof authorized to levy taxes; or

(C) Any state of the United States or any public body thereof if the obligations or guarantees are general obligations;

(5) Obligations to the extent secured by:

(A) Obligations specified in paragraph (6) of this subsection;

(B) Obligations which the bank would be authorized to acquire without limit as investment securities pursuant to Code Section 7-1-287;

(C) Obligations fully guaranteed by the United States;

(D) Guaranties or commitments or agreements to take over or purchase made by any public body of the United States or any corporation owned directly or indirectly by the United States; or

(E) Loan agreements between a local public agency or a public housing agency and an instrumentality of the United States pursuant to national housing legislation under which funds will be provided for payment of the obligations secured by such loan agreements;

(6) Obligations in the form of investment securities acquired pursuant to Code Section 7-1-287;

(7) Obligations with respect to acceptances under Code Section 7-1-284; and

(8) Obligations with respect to the sale of federal or correspondent funds to financial institutions having their deposits insured to the same extent as that required of similar institutions chartered in this state.

(d) In lieu of following the limitations contained in subsections (a) through (c) of this Code section, a bank may petition the department for approval to utilize limits applicable to national banks regarding obligations of a single person or corporation.

(e) The department may, by regulation not inconsistent with this Code section, prescribe definitions of and requirements for transactions included in or excluded from the indebtedness to which this Code section applies. The department may also by regulation prescribe less restrictive limitations than those listed in subsections (a) through (c) of this Code section for banks meeting certain financial and management criteria. In addition, the department may, by regulation or otherwise, specify that the liabilities of a group of one or more persons or corporations or both shall be considered as owed by one person or corporation for the purposes of this Code section because the group relies substantially on a common source for the payment of its obligations or makes common use of funds received by it. (Ga. L. 1919, p. 135, art. 19, § 13; Ga. L. 1922, p. 63, § 1; Ga. L. 1927, p. 195, § 9; Code 1933, § 13-2013; Ga. L. 1943, p. 254, § 1; Ga. L. 1951, p. 201, § 1; Ga. L. 1955, p. 414, § 1; Ga. L. 1966, p. 590, § 7; Ga. L. 1969, p. 603, § 1; Ga. L. 1973, p. 526, § 4; Code 1933, § 41A-1306, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 8; Ga. L. 1982, p. 3, § 7; Ga. L. 1983, p. 602, § 6; Ga. L. 1992, p. 6, § 7; Ga. L. 2000, p. 174, § 6.)

**Administrative rules and regulations.** — Department of Banking and Finance, Banks, Loans and discounts, Official Compilation of Rules and Regulations of State of Georgia,

Department of Banking and Finance, Banks, Chapter 80-1-5.

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity in the provisions, decisions under former Civil Code 1910, § 2280(m) have been included in the annotations for this Code section.

**Reasonable control and supervision as to loans of less than ten percent.** — As to loans of less than ten percent, directors are not

justified in absolutely relinquishing to any officer or agent unlimited discretion, but, they must retain and exercise reasonable control and supervision over such officers, amounting to exercise on their part of ordinary care and diligence. *Mobley v. Faulk*, 42 Ga. App. 314, 156 S.E. 40 (1930) (decided under former Civil Code 1910, § 2280(m)).

### OPINIONS OF THE ATTORNEY GENERAL

**Loans not rendered illegal by reduction of lending limit.** — No loans in excess of a bank's lending limit can be made, but loans which were legal when made are not rendered illegal by reduction of bank's lending limit. 1977 Op. Att'y Gen. No. 77-58.

**Purpose of ten percent (now fifteen percent) lending limit imposed** is to protect

depositors, other creditors and shareholders from loss in event that one or two large loans become uncollectible; relaxation of 10 percent (now 15 percent) ceiling is tied to factors such as collateral security and government guarantees, which reduce risk of uncollectibility. 1977 Op. Att'y Gen. No. 77-58.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, § 1009.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 465.

**7-1-286. Real estate loans; acquisition by bank or trust company of ownership interest.**

(a) Except as provided in subsection (b) of this Code section, a bank shall make a loan secured by improved or unimproved real estate (including a leasehold) only where such loan is:

(1) Secured by a mortgage, deed of trust, security deed, or similar instrument providing a first lien or a first security title or is otherwise secured in accordance with regulations prescribed by the department;

(2) For not more than 75 percent of the fair market value of the real estate in the case of a single maturity loan or for not more than 95 percent of the fair market value of the real estate in the case of loans that must be regularly amortized; provided, however, that these limitations shall not apply to:

(A) Any loan secured by real estate made to finance construction of an improvement or development, in which case the amount of the loan shall not exceed 100 percent of the estimated completed value of the improvements;

(B) Any loan which the federal housing administrator insures or makes a commitment to insure;

(C) Any loan which the secretary of veterans affairs guarantees or makes a commitment to guarantee;

(D) Any loan secured by a mortgage, deed of trust, security deed, or similar instrument providing for a nonpurchase money lien on residential real property owned and occupied by the borrower, provided that such loan may not exceed 100 percent of the fair market value of the real estate after deducting all outstanding liens on the property; or

(E) Any other type of loan or a portion thereof with respect to which the department determines that banks may safely extend loans in excess of the foregoing limitations;

(3) Conforms with requirements as to duration, amortization, appraisal, insurance, and documentation, as may be prescribed by regulation of the department.

(b) The limitations of subsection (a) of this Code section shall not apply to:

(1) An investment security acquired pursuant to Code Section 7-1-287;



(2) A loan in connection with which the bank takes a real estate lien as security in the exercise of banking prudence but as to which it is relying for repayment on:

(A) The general credit of the obligor or of an installment buyer or of a lessee of the real estate;

(B) Collateral other than the real estate lien;

(C) A guaranty or an agreement to take over or purchase the loan, in the event of default, by a financially responsible person other than a person engaged in the business of guaranteeing real estate loans; or

(D) An agreement by a financially responsible person to take over or purchase the loan, or to provide funds for payment thereof, within a period of two years from the date of the loan;

and there is documentation in the file setting forth the applicable facts to support reliance on this paragraph.

(c) For the purpose of this Code section, a "leasehold" shall mean the interest, which is security for a loan, of a lessee of real estate under a lease which on the date of the loan has an unexpired term extending at least ten years beyond the maturity of the loan or contains a right of renewal, which may be exercised by the bank, extending at least ten years beyond the maturity of the loan.

(d) Notwithstanding any other provisions of this chapter and otherwise subject to regulations of the department, a bank or trust company may acquire, directly or indirectly, an ownership interest in real estate incidental to the financing of the purchase, development, or improvement of such real estate, provided:

(1) The amount of such ownership interest shall not exceed 25 percent of the appraised value of the real estate;

(2) The amount of such ownership interest when aggregated with the amount financed shall not exceed the limitations prescribed by this Code section and Code Section 7-1-285;

(3) The ownership interest shall be terminated upon substantial repayment of the financing in the manner prescribed in Code Section 7-1-263, relating to the divestiture of real estate interest; and

(4) Any time real estate owned by a bank or trust company pursuant to this subsection is held or disposed of pursuant to the provisions of Code Section 7-1-263, said action to hold or dispose shall be reported in writing annually to the stockholders. Said report shall include disclosure of any real estate acquired by foreclosure or the taking by a deed in lieu of foreclosure and the name or names of the corporation or individuals from whom title was taken. (Ga. L. 1919, p. 135, art. 19, § 15; Code 1933,



§ 13-2015; Ga. L. 1937, p. 423, § 1; Ga. L. 1945, p. 208, § 1; Ga. L. 1959, p. 250, § 1; Ga. L. 1965, p. 281, § 1; Ga. L. 1972, p. 556, § 1; Code 1933, § 41A-1307, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 18; Ga. L. 1989, p. 1249, § 4; Ga. L. 1992, p. 6, § 7; Ga. L. 1998, p. 795, § 14; Ga. L. 2000, p. 174, § 7; Ga. L. 2001, p. 970, § 2.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1989, “Any time” was substituted for “Anytime” at the beginning of paragraph (e)(4) (now (d)(4)).

**Administrative rules and regulations.** — Rules governing real estate loans, Official

Compilation of Rules and Regulations of State of Georgia, Rules of Department of Banking and Finance, Chapter 80-1-5.

**Law reviews.** — For article, “Business Associations,” see 53 Mercer L. Rev. 109 (2001).

### JUDICIAL DECISIONS

**Where bank letter confirming loan did not specify the financing terms** the seller could not be sure that the buyer had obtained a commitment in accordance with the con-

tract by terms which the buyer would be bound. *Brown v. Morris Real Estate Consultants, Inc.*, 256 Ga. 269, 347 S.E.2d 563 (1986).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 609.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 466.

**ALR.** — Bank’s liability to real property purchaser for misrepresentation respecting

purchaser’s obtaining government guaranteed or subsidized loan, 37 ALR4th 773.

Financing agency’s liability to purchaser of new home or structure for consequences of construction defects, 20 ALR5th 499.

### 7-1-287. Dealings in securities; conflicts of interest; divestiture and fines.

Notwithstanding the limitations of Code Section 7-1-288, a bank may purchase, sell, underwrite, and hold securities which are obligations in the form of bonds, notes, or debentures or mutual funds, investment trusts, or pools primarily consisting of such bonds, notes, or debentures, and may purchase, sell, and hold corporate debt obligations, to the extent authorized by regulations of the department. The department may issue regulations which prescribe operating restrictions and standards of conduct dealing with potential conflicts of interest and shall prescribe rules for divestiture of securities held in violation of such regulations and fines for violations not to exceed \$10,000.00 per day during which each violation remains uncorrected. A bank may hold without limit securities which are obligations of the United States or obligations which are guaranteed fully as to principal and interest by the United States or general obligations of any state. (Ga. L. 1919, p. 135, art. 19, § 23; Ga. L. 1924, p. 76, § 1; Ga. L. 1927, p. 195, § 10; Code 1933, § 13-2023; Ga. L. 1946, p. 65, § 1; Ga. L. 1947, p. 501, § 1; Ga. L. 1950, p. 18, § 1; Ga. L. 1951, p. 284, § 1; Ga. L. 1957, p. 275, § 1; Ga. L. 1958, p. 133, § 1; Ga. L. 1959, p. 238, § 1; Ga. L. 1962, p. 95, § 1; Ga. L. 1965, p. 523, § 1; Ga. L. 1968, p. 1162, § 1; Ga. L. 1969, p. 976, § 1;

Code 1933, § 41A-1308, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1249, § 5; Ga. L. 1999, p. 674, § 5.)

**Administrative rules and regulations.** — State of Georgia, Rules of Department of Rules governing investment securities, Official Compilation of Rules and Regulations of Banking and Finance, Chapter 80-1-4.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 504, 518, 620, 643.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 236.

**ALR.** — Rights of owners of securities deposited in bank upon its insolvency, 51 ALR 914; 84 ALR 1534; 126 ALR 625.

#### 7-1-288. Corporate stock and securities.

(a) A bank may engage in any transaction with respect to shares of stock or other capital securities of any corporation in accordance with this Code section and in other instances as provided in state or federal law.

(b) A bank may:

(1) Engage in transactions with respect to issuance and transfer of shares of its own stock and capital securities and in other transactions with respect to such stock and capital securities authorized by this chapter;

(2) Purchase and sell shares of stock, bonds, capital securities, and other investment products upon the order of and for the account of a customer without recourse against it;

(3) Receive a pledge or other security interest in stock or capital securities in order to secure loans made in good faith, except that it may not receive such interests in its own stock or capital securities nor lend in one or more transactions, involving one or more borrowers, more than 30 percent of its statutory capital base on the stock or capital securities of any corporation (including therein loans made directly to the corporation without ample security but excluding obligations representing the sale of federal or correspondent funds to another financial institution). The department may, by regulation or otherwise, specify that two or more corporations are so interrelated that their stock shall be regarded as the stock of one corporation for the purposes of this subsection.

(c) Notwithstanding any other provisions of law to the contrary, a bank may acquire and hold for its own account:

(1) Shares of stock of a federal reserve bank without limitation of amount;

(2) Shares of stock or interests in:

(A) Any state or federal government sponsored instrumentality for the guarantee, underwriting, or marketing of residential housing or financing of residential housing;

(B) A business development corporation or small minority business development corporation authorized under Article 6 of this chapter;

(C) An agricultural credit corporation duly organized under the laws of this state having authority to make loans to farmers of this state for agricultural purposes under programs administered by the federal farm credit system;

(D) A bank service corporation created to provide support services for one or more financial institutions;

(E)(i) A bank principally engaged in foreign or international banking or banking in a dependency or insular possession of the United States, either directly or through the agency, ownership, or control of local institutions in foreign countries or in such dependencies or insular possessions, including the stock of one or more corporations existing pursuant to Section 25(a) of the Federal Reserve Act, provided that, before a bank may purchase a majority interest in any such banking institution, it shall enter into an agreement with the department to restrict its operations in such manner as the department may prescribe; and provided, further, that, if the department determines that said restrictions have not been complied with, it may order the disposition of said stock upon reasonable notice.

(ii) A bank engaged in providing banking or other financial services to depository financial institutions, which bank's ownership consists primarily of such depository financial institutions;

(F) A corporation engaged in functions or activities that the bank or trust company is authorized to carry on, including, but not limited to: conducting a safe-deposit business; holding real estate; acting as a financial planner or investment adviser; offering of a full range of investment products; promoting and facilitating international trade and commerce; and exercising powers incidental to financial activities as provided in paragraph (11) of Code Section 7-1-261; in addition to functions or activities which include exercising powers granted by department regulations or exercising powers determined by the commissioner to be financial in nature or incidental to the provision of financial services, so long as these activities do not pose undue risk to the safety and soundness of the financial institution and are consistent with the objectives of this chapter as stated in Code Section 7-1-3; provided, however, unless the bank is exempt, nothing contained in this subparagraph shall relieve any such corporation from undertaking registration, licensing, or other qualification to engage in such functions or activities as may otherwise be required by law; and



(G) Other corporations created pursuant to act of Congress or pursuant to Chapter 3 of Title 14, known as the "Georgia Nonprofit Corporation Code," for the purpose of meeting the agricultural, housing, health, transit, educational, environmental, or similar needs where the department determines that investment therein by banks is in the public interest;

(3) Shares of stock of small business investment companies organized under acts of Congress and doing business in this state, provided that the aggregate investment by the bank in such shares shall not exceed 5 percent of its statutory capital base; and

(4) Shares of stock or partnership interests in a corporation or partnership the primary business of which, as determined by the department, is to promote the public welfare or community development by engaging in the development of low and moderate-income housing, job training and job placement programs, credit counseling, public education regarding financial matters, small business development, and other similar purposes. The ability to invest in such stock or partnership interests shall also be subject to such limitations and approval procedures as the department deems necessary in order to assure that such investments are not a safety and soundness concern.

(d) A bank acquiring stock or an interest in an entity listed in paragraph (2) of subsection (c) of this Code section shall be subject to the following limitations:

(1) Where the entity carries on only such activities as the bank could legally perform itself, there is no limitation on investment;

(2) Where the activities of the entity go beyond those that the bank could legally perform, the bank's investment may not exceed 10 percent of its statutory capital base; and

(3) Where the investment is in stock of the Federal Home Loan Bank, there is no limitation on the bank's investment, provided such investment is for the purpose of utilizing the services of the Federal Home Loan Bank.

(e) Prior approval by the department is required for acquisitions listed in subparagraphs (c)(2)(D) through (c)(2)(G) of this Code section. The department, by regulation, may permit expedited or notice only procedures and may provide for applicable administrative fees.

(f) The department may by rule or regulation prescribe less restrictive investment limitations than those contained in this Code section for banks meeting certain financial and management criteria. (Ga. L. 1919, p. 135, art. 19, §§ 20, 23; Ga. L. 1924, p. 76, § 1; Ga. L. 1927, p. 195, § 10; Code 1933, §§ 13-2017, 13-2023; Ga. L. 1946, p. 65, § 1; Ga. L. 1947, p. 501, § 1; Ga. L. 1950, p. 18, § 1; Ga. L. 1951, p. 284, § 1; Ga. L. 1953, Nov.-Dec. Sess.,



p. 328, § 1; Ga. L. 1957, p. 275, § 1; Ga. L. 1958, p. 133, § 1; Ga. L. 1959, p. 238, § 1; Ga. L. 1959, p. 328, § 1; Ga. L. 1962, p. 95, § 1; Ga. L. 1965, p. 523, § 1; Code 1933, § 13-2023.1, enacted by Ga. L. 1968, p. 1042, § 1; Ga. L. 1968, p. 1162, § 1; Ga. L. 1969, p. 976, § 1; Ga. L. 1972, p. 798, § 6; Code 1933, § 41A-1309, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 19; Ga. L. 1977, p. 730, § 3; Ga. L. 1979, p. 953, § 1; Ga. L. 1983, p. 602, § 7; Ga. L. 1984, p. 22, § 7; Ga. L. 1987, p. 1586, § 4; Ga. L. 1989, p. 1249, § 6; Ga. L. 1995, p. 673, § 13; Ga. L. 1996, p. 6, § 7; Ga. L. 1997, p. 143, § 7; Ga. L. 1997, p. 485, § 12; Ga. L. 1999, p. 674, § 6; Ga. L. 2000, p. 174, § 8; Ga. L. 2001, p. 970, § 3; Ga. L. 2002, p. 1220, § 5.)

**The 2002 amendment**, effective July 1, 2002, in subsection (a), substituted “A” for “Except as provided in subsections (b) and (c) of this Code section and in Code Section 7-1-261, a”, deleted “not” preceding “engage”, and added “in accordance with this Code section and in other instances as provided in state or federal law”.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2001, “subparagraphs (c)(2)(D) through (c)(2)(G)” was substituted for “subparagraphs (D) through (G)” in subsection (e).

**U.S. Code.** — Section 25(a) of the Federal Reserve Act, referred to in subsection (c)(2)(E)(i) of this section, is codified as 12 U.S.C. § 611 et seq.

**Administrative rules and regulations.** — Investment securities, Official Compilation of Rules and Regulations of State of Georgia, Department of Banking and Finance, Banks, Chapter 80-1-4.

**Law reviews.** — For article, “Business Associations,” see 53 Mercer L. Rev. 109 (2001).

## OPINIONS OF THE ATTORNEY GENERAL

**Discussion of former Code 1933, § 13-2022** (see O.C.G.A. §§ 7-1-288 and 7-1-370), and deposits by banks in mutual

**savings and loan association.** — See 1978 Op. Att’y Gen. No. 78-66.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 620, 623.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 235, 236, 466.

**ALR.** — Rights of owners of securities

deposited in bank, upon its insolvency, 51 ALR 914; 84 ALR 1534; 126 ALR 625.

Power of bank or trust company to create trust out of its securities and sell participation certificates therein, 97 ALR 1182.

## 7-1-289. Security for deposits.

(a) A bank may, unless otherwise specifically approved in writing by the department, pledge or otherwise grant security interests in its assets to secure deposits of:

(1) Public funds;

(2) Funds of a pension fund for employees of a public body of the state;

(3) Funds for which a public body of the state or an officer or employee thereof or any court of law is the custodian or trustee pursuant to statute;

(4) Funds held by the department as receiver;

(5) Funds which are required to be secured by law or by an order of a court;

(6) Its own fiduciary funds or the fiduciary funds of an affiliate. In either case, the funds shall be deposited with the pledging institution and held in its commercial department; and

(7) Public funds deposited in another bank.

(b) A bank may not pledge or otherwise grant security interests in its assets as security for deposits other than the deposits listed in subsection (a) of this Code section. (Code 1933, § 13-2068, enacted by Ga. L. 1973, p. 526, § 8; Code 1933, § 41A-1310, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1993, p. 929, § 1; Ga. L. 1995, p. 673, § 14.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 617, 618.

**ALR.** — Power of bank to pledge assets to secure general depositors, 65 ALR 1412; 87

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 230, 231.

ALR 1456; 101 ALR 515; 112 ALR 483.

#### 7-1-290. Powers as surety or guarantor.

(a) Except as authorized in subsection (b) of this Code section, in paragraph (10) of Code Section 7-1-260, and in paragraph (4) of Code Section 7-1-261, a bank shall not lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor.

(b) A bank may act as a surety or guarantor if it has a substantial interest in the performance of the transaction involved or has a segregated deposit sufficient in amount to cover the institution's potential liability.

(c) Nothing in this Code section shall be construed to prohibit banks from:

(1) Giving warranties or guaranties in connection with the handling of items for collection; the transfer, exchange, or collection of securities; or the sale or disposition of its assets;

(2) Issuing letters of credit; and

(3) Pledging or otherwise granting security interests in their assets to secure public funds deposited in another bank.

(d) Notwithstanding other provisions of law to the contrary, irrevocable letters of credit issued by banks domiciled in this state may, in the discretion

of the party in whose favor such irrevocable letter of credit is issued, be accepted in lieu of any bond, surety, or pledge of assets required by the laws of this state or regulations promulgated pursuant to such laws. (Code 1933, § 41A-1311, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1983, p. 602, § 8; Ga. L. 1989, p. 1211, § 5; Ga. L. 1993, p. 929, § 2.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 617.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 244.

**ALR.** — Liability of bank on letter of credit as affected by quality or condition of

goods for purchase price of which it is issued, 39 ALR 755.

Liability of guarantor of or surety for bank deposit as affected by reorganization, merger, or consolidation of bank, 78 ALR 381.

### **7-1-291. Borrowings; liabilities not subject to restrictions; restrictions; borrowing for emergencies.**

(a) Subject to the restrictions of subsection (c) of this Code section, a bank may borrow money and issue notes, debentures, or other obligations to evidence such borrowings.

(b) The following outstanding liabilities are not subject to the restrictions in this Code section:

(1) Liabilities to a federal reserve bank on account of money borrowed or rediscounts;

(2) Liabilities on account of the acquisition of reserve balances at a federal reserve bank or other reserve agent from a member or a nonmember bank;

(3) Liabilities on account of agreements to repurchase securities sold by the bank (commonly known as “repurchase agreements”);

(4) Liabilities in the form of subordinated securities under Code Section 7-1-419; and

(5) Liabilities which do not constitute or result from the borrowing of money under definitions prescribed by regulation of the department.

(c) A bank that wishes to borrow from sources other than those listed in subsection (b) of this Code section may borrow an aggregate amount which exceeds the sum of twice its unimpaired capital stock plus 100 percent of its unimpaired paid-in capital, appropriated retained earnings, and retained earnings, provided the bank’s board of directors has approved a comprehensive written funding plan that addresses the following safety and soundness concerns:

(1) The plan must contain a detailed evaluation of the bank’s management expertise and information systems to support the plan; and



(2) The plan must contain adequate asset and liability, liquidity, and funds management policies and procedures to specifically address the use of borrowings as an alternate funding source.

(d) The department may, notwithstanding the other provisions of this Code section, temporarily waive the requirements of this Code section to permit an individual bank to borrow for emergency purposes. The department shall review the funding plan of each bank as a part of its normal supervisory program. The department may prohibit or place additional restrictions upon borrowings of any bank which would, in the judgment of the department, constitute an unsafe or unsound practice in view of the condition and circumstances of the bank. (Ga. L. 1919, p. 135, art. 19, § 25; Code 1933, § 13-2025; Ga. L. 1966, p. 590, § 9; Ga. L. 1973, p. 526, § 5; Code 1933, § 41A-1312, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 20; Ga. L. 1996, p. 848, § 5.)

**Administrative rules and regulations.** — State of Georgia, Rules of Department of Rules governing borrowed money, Official Banking and Finance, Chapter 80-1-9. Compilation of Rules and Regulations of

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 487, 615 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 243.

#### 7-1-292. Interest and fees.

Any bank may take, receive, reserve, and charge interest and fees on any loan, advance of money, or forbearance to enforce the collection of money at rates not exceeding the limits set by the laws of this state. Whenever such laws authorize a special interest or fee rate with respect to a designated type of loan, then a bank may charge that special interest or fee on loans of that type made by it. Whenever such laws authorize a person or a corporation other than a bank to charge a special interest or fee rate with respect to a designated type of loan, then a bank may charge such rate or fee on loans made by it which would qualify as the designated type of loan if made by the person or corporation so authorized without any requirement for the bank to obtain any license, qualification, or permit. (Ga. L. 1919, p. 135, art. 19, § 19; Code 1933, § 13-2019; Code 1933, § 41A-1313, enacted by Ga. L. 1974, p. 705, § 1.)

**Cross references.** — Regulation of rates of interest generally, Ch. 4 of this title.

**Law reviews.** — For article surveying Georgia cases dealing with commercial law from June 1977 through May 1978, see 30 Mercer L. Rev. 15 (1978). For article discuss-

ing methods of computation of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978). For survey article on commercial law, see 34 Mercer L. Rev. 31 (1982).

## JUDICIAL DECISIONS

**Cited in** Sumner v. Adel Banking Co., 244 Ga. 73, 259 S.E.2d 32 (1979); FDIC v. Lattimore Land Corp., 656 F.2d 139 (5th Cir. 1981).

## OPINIONS OF THE ATTORNEY GENERAL

**A bank will not be authorized to charge rates permitted by former Code 1933,** § 41A-3109 (see O.C.G.A. § 7-1-658). 1975 Op. Att'y Gen. No. 75-2.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, § 1003.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 470.

**ALR.** — Enforceability of provision in loan commitment agreement authorizing lender to charge standby fee, commitment fee, or similar deposit, 93 ALR3d 1156.

**7-1-293. Savings banks and state savings and loan associations.**

(a) A bank desiring to be accorded treatment under this chapter as a savings bank or state savings and loan association shall so state in its articles.

(b) A savings bank or a state savings and loan association may apply to the department for permission to relinquish its status as a savings bank or state savings and loan association and become a commercial bank by filing an appropriate amendment to its articles. The department may exercise its discretion in determining whether to approve such a change and shall consider in connection therewith the same criteria considered in approving the original articles of incorporation.

(c) A savings bank shall provide its depositors with deposit insurance coverage pursuant to those deposit insurance provisions of this chapter applicable to commercial banks. A state savings and loan association shall provide its depositors, but not its shareholders, with deposit insurance coverage pursuant to those deposit insurance provisions of this chapter applicable to building and loan associations.

(d)(1) Unless specifically exempt therein, all rules and regulations promulgated by the department and applicable to commercial banks shall be applicable to a savings bank.

(2) The commissioner shall not approve an application of a financial institution requesting conversion to a commercial bank or a mutual savings bank unless such financial institution divests itself of all branches which were not lawfully established and in existence prior to July 1, 1996, or which do not conform with the branch banking laws of this state if established on or after July 1, 1996. Any federal mutual savings bank or federal mutual savings and loan association with a banking location in Georgia prior to July 1, 1996, which converts to a state charter, shall be entitled to retain the banking locations lawfully established in Georgia which conform to the limitations of this subsection.

(e) The conversion, merger, or consolidation of a federal savings and loan association or federal savings bank, including a federal mutual savings and loan association or federal mutual savings bank, shall be accomplished pursuant to the same procedures as are prescribed in this chapter for a conversion, merger, or consolidation involving a national bank, provided that any federal mutual savings bank or federal mutual savings and loan association converting to a Georgia mutual savings bank must have been in existence on January 1, 1997, and must have had its main office in the State of Georgia; and provided, further, that the approval of such conversion by the members of such association or bank shall be by such vote as is required in the articles of association and bylaws of such association or bank. A federal mutual savings and loan association or federal mutual savings bank shall upon conversion be and be known as a mutual savings bank. Conversion of a building and loan association into a savings bank or state savings and loan association may be made with the approval of the department and an appropriate amendment of the articles of incorporation of the association. In considering any plan for the conversion, merger, or consolidation of a federal savings and loan association or federal savings bank or conversion of a building and loan association, the department shall not approve the plan unless it is satisfied that such plan is fair and equitable to all borrowers, depositors, and shareholders.

(f)(1) The conversion, merger, or consolidation of a federal mutual savings and loan association holding company or federal mutual savings bank holding company shall be accomplished pursuant to the same procedures as are prescribed in this chapter for a conversion, merger, or consolidation involving a national bank, provided that the approval of such conversion shall be by such vote of the members of such holding company as is required in the articles of association and bylaws of such holding company but shall be further conditioned upon the conversion of the federal savings and loan association or federal savings bank subsidiary of such holding company to a savings bank contemporaneously with the holding company's conversion.

(2) A state mutual savings bank holding company shall be subject to all of the rules and regulations of the department as if it were a commercial bank organized under this chapter, provided that it shall be authorized to own the stock of a savings bank subsidiary.

(g) With respect to the corporate governance of a mutual savings bank or mutual savings bank holding company, the members of the savings bank or holding company as defined in the articles of association, subject to the approval of the department, shall be the equivalent of the shareholders of a commercial bank or bank holding company having such rights, preferences, and powers and subject to such limitations as may be contained in the rules and regulations of the department and in the articles of association and bylaws of the savings bank or holding company approved by the department.



(h) Except as provided therein, Article 1 of this chapter and all other parts of this article shall apply to all mutual savings banks, savings banks, and state savings and loan associations.

(i) Unless otherwise provided, the provisions of Part 18 of this article applicable to bank holding companies shall be applicable to mutual savings bank holding companies and unless specifically exempt therein, all rules and regulations promulgated by the department applicable to bank holding companies shall be applicable to mutual savings bank holding companies.

(j) In the event that a federal mutual savings and loan association or federal mutual savings bank upon conversion to a savings bank would own or hold assets or engage in any business that would not be allowable for a commercial bank, then the plan of conversion presented to the department shall include a plan for disposal of such assets or the termination of such nonconforming business within a reasonable time but in no event longer than four years from the date of the conversion. (Code 1933, § 41A-1314, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1566, § 2; Ga. L. 1982, p. 3, § 7; Ga. L. 1982, p. 1781, § 1; Ga. L. 1983, p. 602, § 9; Ga. L. 1987, p. 1586, § 5; Ga. L. 1988, p. 13, § 7; Ga. L. 1992, p. 6, § 7; Ga. L. 1997, p. 485, § 13.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 15, 601.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 605.

**ALR.** — Construction of savings bank by-law expressly assented to by depositor,

relieving bank from liability for payment to unauthorized person, 52 ALR 760.

Liability of savings bank to depositor for amounts withdrawn by depositor's agent without presentation of passbook, 139 ALR 835.

#### 7-1-294. Transaction of business on holidays and outside of banking hours.

Notwithstanding any existing provisions of law relative to the time of maturity or presentment of negotiable instruments, any financial institution doing business in this state may, at its option, outside of regular banking hours on any day, or at any time on a day which is in whole or in part a holiday, pay, certify, or accept negotiable or nonnegotiable instruments including a demand instrument dated on the holiday on which it is presented for payment, certification, or acceptance and transact any other business which would be valid if done on a business day during regular banking hours; provided, however, that nothing herein contained shall authorize the transaction of business on Sundays.

Nothing herein contained shall require any financial institution which remains open for business on all or a part of any holiday to do or perform any act on that day in its capacity as a collection agent which would not be required of it if it were closed on such holiday or part holiday. (Code 1933, § 14-1809.2, enacted by Ga. L. 1949, p. 352, § 1.)

**Cross references.** — Public and legal holidays and religious holidays, §§ 1-4-1, 1-4-2. Definition of “banking day” for purposes of

Art. 4, T. 11, the “Uniform Commercial Code,” § 11-4-104.

#### RESEARCH REFERENCES

**ALR.** — Power of municipal corporation to legislate as to Sunday observance, 37 ALR 575.

Power to extend Sunday observance laws beyond Sunday hours, 50 ALR 628.

Legal aspects and consequences of declaration of “bank holiday”, 95 ALR 934.

Validity, construction, and effect of “Sunday closing” or “blue” laws — modern status, 10 ALR4th 246.

#### 7-1-295. Transaction fees charged by operators of automated teller machines.

An operator of an automated teller machine in this state may charge a transaction fee to the customer using the machine. An agreement to share automated teller machines may not prohibit, limit, or restrict the right to charge such transaction fees and no such agreement may prohibit, limit, or restrict the right of one or more financial institutions to enter into an agreement not to charge such transaction fees to their common customers. (Code 1981, § 7-1-295, enacted by Ga. L. 1993, p. 917, § 3; Ga. L. 1997, p. 575, § 1.)

### PART 4

#### POWERS OF TRUST COMPANIES

#### RESEARCH REFERENCES

**ALR.** — Statute regulating banks and trust companies as special or class legislation, or

as denying the equal protection of the laws, 111 ALR 140.

#### 7-1-310. Powers to act as fiduciary and in other representative capacities.

(a) A trust company may act, alone or with others, as:

- (1) Fiduciary;
- (2) Investment advisor;
- (3) Custodian of property;
- (4) Agent or attorney in fact;
- (5) Registrar or transfer agent of securities;
- (6) Fiscal agent of the United States, a state or a public body thereof, a corporation, or a person; and
- (7) Treasurer of a public body or of a nonprofit corporation.

(b) A trust company shall have, in respect to any capacity in which it may act pursuant to a power under subsection (a) of this Code section, all the rights and duties which a person has in such capacity under applicable laws and under the terms upon which the trust company is designated to act in such capacity.

(c) Every bank, building and loan association, and credit union operating pursuant to this chapter shall possess all of the rights, privileges, powers, and responsibilities herein conferred upon trust companies; provided, however, that no such bank, building and loan association, or credit union shall exercise such powers and privileges without the prior written approval of the department after a careful consideration of the factors enumerated in Code Section 7-1-394, relating to the chartering of trust companies. Any bank exercising or partially exercising trust powers prior to February 27, 1976, authorized by its articles may continue to exercise or partially to exercise those powers to the extent approved by the department without the necessity of obtaining a new approval. (Ga. L. 1898, p. 78, § 3; Civil Code 1910, § 2817; Ga. L. 1917, p. 56, § 1; Ga. L. 1919, p. 135, art. 2, § 2; Ga. L. 1920, p. 76, § 1; Code 1933, § 109-201; Code 1933, § 41A-1401, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 274, § 1; Ga. L. 1981, p. 1366, § 9; Ga. L. 1982, p. 3, § 7; Ga. L. 1989, p. 1257, § 4.)

**Cross references.** — Substitution of parties to contract generally, § 13-4-20. Impossibility as excuse for non-performance,

§ 13-4-21. Trusts and trustees generally, Ch. 12, T. 53.

## JUDICIAL DECISIONS

**Bank already exercising trust power on effective date of act.** — Where the evidence showed that a bank was exercising or partially exercising trust powers prior to February 27, 1976, and was doing so with the approval of the Department of Banking and Finance, having secured the department's approval to merge with another bank which was at that time the valid trustee as to the title to a utility corporation's property, the effect of this merger was to confer the

trusteeship upon the bank by operation of law, and the absence of authorization for a full-blown trust department was irrelevant; since the bank was already exercising the trust power and was doing so with the prior approval of the department on the date that O.C.G.A. § 7-1-310(c) became effective, securing "new approval" to continue to exercise that power was unnecessary. *Smith v. Hawks*, 182 Ga. App. 379, 355 S.E.2d 669 (1987).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 629.

76 Am. Jur. 2d, Trust, §§ 240 et seq., 365 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 631, 633, 636.

**ALR.** — Trust company's agreement to repay in cash principal of trust fund investment as ultra vires, 96 ALR 453.

Dealings between bank or trust company and itself acting as executor, administrator, or trustee, 112 ALR 780.



**7-1-311. Operations as a fiduciary.**

Except as otherwise permitted by Code Section 7-1-315, a trust company in its capacity as fiduciary shall:

(1) Segregate all property (other than items in the course of collection) held as a fiduciary from its nonfiduciary assets and keep separate records of all such fiduciary property for each account for which such property is held;

(2) Hold property held as fiduciary in a form complying with applicable law;

(3) Keep fiduciary funds awaiting investment or distribution in deposits in an authorized financial institution (including, in the case of a trust company which is also a bank, its own commercial department or the commercial department of an affiliate as provided in Code Section 7-1-289) which is insured or, to the extent of any deficiencies in insurance coverage, fully secured by a pledge or assignment of bonds or obligations of the United States, this state, or a public body of either or other obligations guaranteed as to principal and interest by the United States, this state, or a public body of either or real estate loans secured by a first lien or security title to improved realty and insured pursuant to any title of the National Housing Act. The beneficial owners of such uninvested funds shall have a first and prior lien on such security;

(4) Not be required to execute a bond or give any security required by the law of fiduciaries but may give its own bond and pledge or otherwise grant security interests in its assets as security for the faithful performance of its duties as fiduciary or as surety for such faithful performance by any cofiduciary where such is requested or otherwise required; and

(5) Provide any oath or affirmation or any affidavit required of the trust company through an officer thereof acting on behalf of the trust company. (Ga. L. 1935, p. 484, §§ 1, 2; Ga. L. 1953, Jan.-Feb. Sess., p. 108, §§ 1-3; Ga. L. 1965, p. 244, §§ 1, 2; Ga. L. 1966, p. 468, § 1; Code 1933, § 41A-1402, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1988, p. 1494, § 1; Ga. L. 1995, p. 673, § 15.)

**Cross references.** — Substitution of parties to contract generally, § 13-4-20. Impossibility as excuse for non-performance, § 13-4-21.

**U.S. Code.** — The National Housing Act, referred to in paragraph (3) of this section, is codified generally as 12 U.S.C. § 1701 et seq.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 629.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 631.

**ALR.** — Trust company's agreement to repay in cash principal of trust fund investment as ultra vires, 96 ALR 453.

Dealings between bank or trust company

and itself acting as executor, administrator, or trustee, 112 ALR 780.

### **7-1-312. Nonfiduciary investments.**

A trust company which is not a bank may, apart from its fiduciary activities, invest in stock and investment securities, except that it may not acquire or hold its own stock otherwise than pursuant to paragraphs (8) and (9) of Code Section 7-1-261. (Code 1933, § 41A-1403, enacted by Ga. L. 1974, p. 705, § 1.)

### **7-1-313. Collective investment funds.**

(a) As used in this Code section, the term “collective investment fund” shall include a common trust fund and any other type of collective investment fund.

(b) A trust company may establish and maintain collective investment funds for the investment or reinvestment of property which:

(1) Is contributed by the trust company in a capacity in which it is authorized to act pursuant to Code Section 7-1-310; and

(2) Is eligible for contribution to a collective investment fund under this Code section.

(c) Property shall be eligible for contribution whenever the instrument, judgment, decree, or order under which the trust company holds the property does not prohibit investment in the type of collective investment fund involved, provided that, if the trust company holds the property under circumstances limiting it to investing the property in legal investments for fiduciaries, then it may invest the property only in a collective investment fund limited to assets authorized as legal investments for a fiduciary.

(d) The department shall regulate the establishment, operation, and maintenance of collective investment funds. Such regulations of the department shall comply with the general standards for exercise of the regulatory power of the department under this chapter and, in addition, shall be designed to assure:

(1) Ratably equal treatment of the participants in a fund by imposing minimum requirements for the method and frequency of valuation of participations in the fund, for the time and method of admission or withdrawals of participations in the fund, and for the determination of interests of participants in the assets and income of the fund; and

(2) The competitive equality between trust companies and national banks exercising fiduciary powers with respect to the authority to establish and maintain collective investment funds to the extent compatible with the general purposes of this chapter.

(e) No mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund shall be deemed a violation of this Code section or of any other duty of the trust company if, promptly after discovery of the mistake, the trust company takes whatever action may be practicable in the circumstances to remedy the mistake.

(f) Any other trust company or national bank with trust powers which is a member of an affiliated group (as defined in Section 1504 of the Internal Revenue Code) with a trust company maintaining collective investment funds may participate in one or more such funds as though they were maintained by the participating trust company. Such participation may be made pursuant to agreement providing for reasonable compensation for the trust company maintaining the fund or funds.

(g) A trust company, in any capacity in which it may act under Code Section 7-1-310, may invest property collectively in accordance with the specific terms upon which it receives such property, without regard to the restrictions of this Code section. (Ga. L. 1943, p. 442, §§ 2, 3, 6, 8, 13, 14; Ga. L. 1972, p. 816, §§ 2, 3; Code 1933, § 41A-1404, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1987, p. 191, § 9.)

**Editor's notes.** — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, which were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

**U.S. Code.** — Section 1504 of the Internal Revenue Code, referred to in subsection (f) of this section, is codified as 26 U.S.C. § 1504.

### **7-1-314. Purchase in fiduciary capacity of securities underwritten by syndicate including institution.**

A trust company or a financial institution with fiduciary powers may, in its fiduciary capacity, purchase securities underwritten by a syndicate which includes the financial institution or an affiliate of the financial institution, provided such purchase is otherwise prudent, not prohibited by the instrument governing the fiduciary relationship, and not otherwise inconsistent with regulations issued by the department. (Code 1981, § 7-1-314, enacted by Ga. L. 1983, p. 602, § 10; Ga. L. 1989, p. 1249, § 7.)



**7-1-315. Satisfaction of fiduciary obligations respecting investment of funds awaiting investment or distribution and charging of fees.**

(a) A trust company complying with this Code section will be deemed to have satisfied its fiduciary obligations and duties with respect to:

(1) The investment of fiduciary funds awaiting investment or distribution;

(2) The charging of fees in connection therewith; and

(3) The disclosure of policies, procedures, and fees in connection therewith.

(b) A trust company may invest fiduciary funds awaiting investment or distribution in short-term, trust-quality investment vehicles, through the medium of a collective investment fund or otherwise. A trust company may also place fiduciary funds awaiting investment or distribution in deposits of the commercial department of such trust company, in the case of a trust company which is also a bank, or in deposits of an affiliate bank; provided, however, that the rate of interest paid on such deposits shall be at least equal to the rate paid by such department or affiliate bank on deposits of similar terms and amounts. A fiduciary shall have complied with this Code section if cash awaiting investment or distribution in excess of \$1,000.00 is invested or deposited within 30 days of receipt or accumulation thereof. The provisions of this subsection shall apply notwithstanding any other law or rule restricting or limiting the investments of fiduciaries.

(c) In addition to any other compensation to which it may be entitled, a trust company may, without necessity of obtaining the approval of any person or court, charge a reasonable fee for the temporary investment of fiduciary funds awaiting investment or distribution, which fee may be calculated upon the amount of such funds actually invested and upon the income produced thereby.

(d) A trust company shall have complied with its duty to disclose fees and practices in connection with the investment of fiduciary funds awaiting investment or distribution if the trust company's periodic statements set forth the trust company's practice and method of computing fees.

(e) This Code section shall be construed as a codification of existing law concerning the fiduciary duties of trust companies and not as a change in such law. (Code 1981, § 7-1-315, enacted by Ga. L. 1988, p. 1494, § 2.)

**PART 4A**

**AFFILIATE TRANSFERS**

**7-1-320. Definitions.**

As used in this part, the term:

(1) "Affiliate transfer" means a transfer by which a bank or trust company delegates, assigns, or transfers to an affiliated trust company or to an affiliated bank which has received the required approvals from the appropriate regulatory authorities to exercise trust powers all of its rights, powers, privileges, accounts, and designations with respect to one or more of its various capacities as fiduciary.

(2) "Affiliated trust company" means a trust company which is affiliated with a bank. A trust company shall be considered an affiliate with a bank in accordance with the definition of such term set forth in paragraph (1) of Code Section 7-1-4. For the purposes of this part, the term affiliated trust company shall also include an affiliated bank which has received the required approvals from the appropriate regulatory authorities to exercise trust powers.

(3) "Bank" means a corporation as defined in either paragraph (7) or (23) of Code Section 7-1-4 and having its principal place of business in Georgia.

(4) "Fiduciary" means a bank or trust company acting in such capacity as set forth in paragraph (20) of Code Section 7-1-4 or as further defined by regulations of the department.

(5) "Trust company" means a corporation as defined in paragraph (40) of Code Section 7-1-4 or a national bank having:

(A) Authority to conduct business only to the extent of its trust powers as provided in 12 U.S.C. Section 92a; and

(B) A principal place of business in Georgia. (Code 1981, § 7-1-320, enacted by Ga. L. 1986, p. 1244, § 1; Ga. L. 1993, p. 915, § 1.)

**Law reviews.** — For note on 1993 amendment of this section, see 10 Ga. St. U.L. Rev. 9 (1993).

**7-1-321. Affiliate transfers authorized; powers and duties of affiliated trust company transferees.**

(a) Any bank authorized by law to engage in the business of acting as a fiduciary is authorized and empowered to make an affiliate transfer whether or not each governing instrument expressly provides for or contemplates an affiliate transfer or whether or not the fiduciary capacity was created by will, indenture, trust, court order, agreement, or other means. No affiliate transfer shall constitute:

(1) A resignation or disqualification of the bank as fiduciary; or

(2) A relinquishment of trust powers by the bank making the affiliate transfer.

Upon execution of an instrument effecting an affiliate transfer by a bank, the affiliated trust company shall, as of the date specified in the instrument, have all of the rights, powers, privileges, appointments, accounts, and designations of the bank regarding each fiduciary capacity so transferred and shall have title to all property, real, personal, and mixed, and all debts due on whatever account, and all other choses in action, and each and every other interest of or belonging to or due to the bank as fiduciary shall be taken and deemed to be transferred to and vested in the affiliated trust company as fiduciary without further act or deed. The affiliated trust company shall file a certificate of transfer with the department setting forth its name, a copy of its governing instrument, a list of the banks with which it is affiliated, a statement of the facts which establish the affiliate relationship, and such other information as may be appropriate.

(b) Upon an affiliate transfer by a bank, the affiliated trust company, in each fiduciary capacity transferred, shall thenceforth be responsible for the performance of all of the duties, responsibilities, and obligations of the bank in such fiduciary capacity, and any claim existing or action or proceeding pending by or against the fiduciary may be prosecuted as if the affiliate transfer had not taken place and the affiliated trust company, as fiduciary, may be substituted in place of the bank, as fiduciary. Neither the rights of creditors to nor any liens upon the property held in any fiduciary capacity shall be impaired by any affiliate transfer. (Code 1981, § 7-1-321, enacted by Ga. L. 1986, p. 1244, § 1; Ga. L. 1994, p. 1780, § 1.)

**7-1-322. Effect of affiliate transfer on bank; abandonment of transfer; substituted fiduciary.**

(a) Notwithstanding the provisions of Code Section 7-1-321, no affiliate transfer shall relieve the bank of any liability with respect to any of its acts and doings as fiduciary, and the bank shall remain liable and responsible to all affiliate transfer beneficiaries and other parties at interest with respect to all actions of the affiliated trust company as if performed by the bank itself.

(b) The bank shall be relieved of any claims, liabilities, or actions arising after the affiliate transfer where such affiliate transfer is expressly authorized by the terms of the instrument governing the fiduciary capacity.

(c) Upon application by an interested party, the bank shall within 30 days either abandon the affiliate transfer subject to such application or proceed to have a successor fiduciary appointed as provided by law.

(d) Nothing in this Code section shall be construed to impair any right of the grantor or beneficiaries of any fiduciary relationship under applicable instruments or otherwise to secure or provide for the appointment of a substituted fiduciary. (Code 1981, § 7-1-322, enacted by Ga. L. 1986, p. 1244, § 1.)



**7-1-323. Appointment of affiliated trust company as agent for bank; liability of bank for actions of agent.**

In addition to and not in limitation of the other powers provided in this part, any bank shall be entitled and empowered to designate an affiliated trust company as its agent for the performance of all acts, obligations, and responsibilities of the bank with respect to any fiduciary capacity. In such event, the bank shall remain fully responsible and liable with respect to all actions of the affiliated trust company as if performed by the bank itself. No such agency relationship shall:

(1) Be deemed an impermissible delegation of responsibility or duty by the bank; or

(2) Constitute a resignation or disqualification of the bank as fiduciary or a relinquishment of trust powers by the bank. (Code 1981, § 7-1-323, enacted by Ga. L. 1986, p. 1244, § 1; Ga. L. 1992, p. 6, § 7.)

**7-1-324. Designation of affiliate trust company as successor fiduciary.**

Upon any affiliate transfer, the affiliate trust company may be designated in any deed, trust, agreement, filing, instrument, notice, certificate, pleading, or other document as successor fiduciary pursuant to this part. (Code 1981, § 7-1-324, enacted by Ga. L. 1986, p. 1244, § 1.)

**7-1-325. Other banking laws unaffected by part.**

Except as expressly provided, nothing in this part shall be construed to amend or modify in any way the laws of the State of Georgia with respect to the establishment of banks, trust companies, branch banks, or bank holding companies or the conduct of the banking business or any part thereof. (Code 1981, § 7-1-325, enacted by Ga. L. 1986, p. 1244, § 1.)

**PART 5****FIDUCIARY INVESTMENT COMPANIES****7-1-330. Definitions.**

As used in this part, the term:

(1) "Fiduciary investment company" means a corporation which is an investment company as defined by the act of Congress entitled "Investment Company Act of 1940" and is incorporated in accordance with Chapter 2 of Title 14 so as to constitute a medium for the investment of funds held by trust institutions and foreign trust institutions in a fiduciary capacity, either alone or with one or more cofiduciaries.

(2) "Foreign trust institution" means any state banking institution or trust company organized under the laws of any state other than Georgia or any national banking association incorporated under the laws of the United States and having its principal office in some state other than Georgia which has trust powers and is authorized to act in a fiduciary capacity under the laws under which it was incorporated.

(3) "Investment adviser" of a fiduciary investment company means:

(A) Any trust institution which, pursuant to contract with a fiduciary investment company possessing the qualifications provided by this part, regularly furnishes advice to such investment company with respect to the desirability of investing in, purchasing, or selling securities or other property or is empowered to determine what securities or other property shall be purchased or sold by such investment company; and

(B) Any person or corporation other than a trust institution, who, pursuant to contract with such trust institution, regularly performs substantially all of such duties undertaken by such trust institution.

(4) "Trust institution" means any trust company or any national bank with its principal office located in this state, authorized to act as a fiduciary. (Ga. L. 1970, p. 515, § 1; Ga. L. 1971, p. 639, §§ 1, 2; Ga. L. 1973, p. 549, § 1; Code 1933, § 41A-1501, enacted by Ga. L. 1974, p. 705, § 1.)

**U.S. Code.** — The Investment Company Act of 1940, referred to in paragraph (1) of this section, is codified as 15 U.S.C. § 80a — 1 et seq.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 45 Am. Jur. 2d, Investment Companies and Advisers, §§ 2, 14, 19.

### 7-1-331. Organization; approval by department.

Any one or more trust institutions may cause a fiduciary investment company or companies to be organized and incorporated, but no trust institution or foreign trust institution may own an interest in more than seven fiduciary investment companies. A fiduciary investment company shall not begin business, except to select an investment adviser, until it is approved by the department. (Ga. L. 1970, p. 515, § 2; Ga. L. 1971, p. 639, § 3; Code 1933, § 41A-1502, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 25.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 627.

**7-1-332. Incorporation.**

Any such fiduciary investment company shall be incorporated under and subject to Chapter 2 of Title 14. The incorporators shall be persons who are officers or directors of the trust institution or institutions causing such fiduciary investment company to be incorporated; and the articles of incorporation shall set forth the name of each trust institution participating in such incorporation and the amount of stock originally subscribed for by each, together with such other facts as are required by Chapter 2 of Title 14. (Ga. L. 1970, p. 515, § 3; Code 1933, § 41A-1503, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-333. Limitations on investments.**

Trust institutions and foreign trust institutions, as defined by this part, acting in a fiduciary capacity and for fiduciary purposes, if exercising due care as a prudent investor, and with the consent of any cofiduciary, may invest and reinvest funds held in such fiduciary capacity in the shares of stock of one or more fiduciary investment companies, except where the will, trust indenture, or other instrument under which such trust institution or foreign trust institution acts prohibits such investment, provided that the fiduciary investment company, by its articles of incorporation issued and granted in conformity with Chapter 2 of Title 14, shall have and possess the corporate powers required by this part and be subject to the limitations set forth by this part; provided, further, that no such trust institution or foreign trust institution shall invest in the stock of a fiduciary investment company on behalf of any estate, trust, or fund administered by such trust institution or foreign trust institution a sum or amount which would result in such estate, trust, or fund having a total investment in such stock in excess of the maximum amount or percentage that might be invested by such estate, trust, or fund, under the regulations of the department in effect at the time of such investment, in any common trust fund having total assets equal to the total assets of the fiduciary investment company as increased by the proposed investment; and no trust institution or foreign trust institution shall invest in the stock of a fiduciary investment company if, immediately after such investment and as a consequence thereof, it would own more than 25 percent of the voting securities of such fiduciary investment company which would then be outstanding. (Ga. L. 1970, p. 515, § 4; Ga. L. 1971, p. 639, § 4; Ga. L. 1973, p. 549, § 2; Code 1933, § 41A-1504, enacted by Ga. L. 1974, p. 705, § 1.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 25.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 627.



**7-1-334. Corporate powers; limitations and restrictions.**

Every fiduciary investment company in which a trust institution or foreign trust institution is authorized by this part to own and hold corporate stock or shares, in order to qualify for such investments, shall have such corporate powers as may be granted by Chapter 2 of Title 14 by virtue of its incorporation under those chapters and shall, in addition, have the following corporate powers under its articles of incorporation and, by its articles of incorporation or its bylaws, be subject to the limitations and restrictions set forth in this Code section:

(1) The stock of any such fiduciary investment company shall be owned and held only by trust institutions and foreign trust institutions acting as fiduciaries or cofiduciaries but may be registered in the name of the nominee or nominees of any such trust institution or foreign trust institution. Such stock shall not be subject to transfer or assignment except to the trust institution or foreign trust institution on whose behalf the stock is held by any such nominee or nominees or to a fiduciary or cofiduciary which becomes successor to the shareholder and which is also a trust institution or foreign trust institution qualified to hold such stock.

(2) A fiduciary investment company shall have no less than five directors, who need not be shareholders but shall be officers or directors of trust institutions or foreign trust institutions holding stock in such fiduciary investment company; provided, however, that no more than two directors shall be officers or directors of any one trust institution or foreign trust institution if the fiduciary investment company has been organized and incorporated by three or more trust institutions.

(3) In acquiring, investing, reinvesting, exchanging, selling, and managing its assets, every fiduciary investment company shall exercise the judgment and care under the circumstances then existing which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the safety of their capital. Within the foregoing limitations, a fiduciary investment company may acquire and retain every kind of investment, specifically including (but not by way of limitation) bonds, debentures, and other corporate obligations and corporate stocks, preferred or common, which men of prudence, discretion, and intelligence acquire or retain for their own account, provided that a fiduciary investment company shall not at any time:

(A) Invest in real estate, commodities, or commodity contracts;

(B) Participate on a joint or joint and several basis in any securities trading account;

(C) Invest in companies for the purpose of exercising control or management;

(D) Make loans to any person or persons, except that the purchase of a portion of an issue of debt securities, convertible debt securities, debt securities with warrants, rights, or options attached, or other similar securities when originally issued or thereafter, of a character commonly distributed publicly, shall not be considered the making of a loan;

(E) Purchase or retain the securities of any issuer if immediately after such acquisition and as a result thereof the following requirements would not be met: at least 75 percent of the total assets in the fiduciary investment company taken at market value are represented by cash and cash items, securities issued or guaranteed by the United States or an instrumentality thereof, and other securities which, as to any one issuer, do not represent more than 10 percent of the value of the total assets of the fiduciary investment company;

(F) Purchase or otherwise acquire the securities of any other investment company as that term is defined in the act of Congress entitled "Investment Company Act of 1940";

(G) Act as underwriter of the securities of other issuers;

(H) Borrow money; or

(I) Engage in margin transactions or short sales or write put or call options for the purchase or sale of securities.

(4) A fiduciary investment company may acquire, purchase, or redeem its own stock and may, by means of contract or by its bylaws, bind itself to acquire, purchase, or redeem its own stock; but it shall not vote shares of its own stock theretofore redeemed.

(5) A fiduciary investment company shall not be responsible for ascertaining the investment powers of any fiduciary who may purchase its stock, shall not be liable for accepting funds from a fiduciary in violation of restrictions of the will, trust indenture, or other instrument under which such fiduciary is acting in absence of actual knowledge of such violation, and shall be accountable only to the department and the fiduciaries who are the owners of its stock.

(6) Every fiduciary investment company subject to the supervision and regulation of the comptroller of the currency of the United States shall comply with all applicable rules and regulations of that agency to the extent that such rules and regulations are in addition to or in conflict with rules and regulations promulgated by the department. (Ga. L. 1970, p. 515, § 5; Ga. L. 1971, p. 639, § 5; Ga. L. 1973, p. 549, §§ 3, 4; Ga. L. 1974, p. 598, §§ 1, 2; Code 1933, § 41A-1505, enacted by Ga. L. 1974, p. 705, § 1.)

**U.S. Code.** — The Investment Company Act of 1940, referred to in subparagraph (3)(F), is codified as 15 U.S.C. § 80a — 1 et seq.

#### RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 633-639, denying the equal protection of the laws, 111 ALR 140.

**ALR.** — Statute regulating banks and trust companies as special or class legislation, as

#### 7-1-335. Rules and regulations; examinations.

Without limitation on the authority conferred by Article 1 of this chapter, the department shall have authority to adopt and issue reasonable and uniform rules and regulations to govern the conduct and management of all fiduciary investment companies. The department shall not examine fiduciary investment companies subject to regular examination by the comptroller of the currency of the United States or the Board of Governors of the Federal Reserve System but shall otherwise have full power to examine fiduciary investment companies and enforce laws concerning them as though they were financial institutions. (Ga. L. 1970, p. 515, § 6; Ga. L. 1973, p. 549, § 5; Code 1933, § 41A-1506, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 25. 45 Am. Jur. 2d, Investment Companies and Advisers, § 4.

#### 7-1-336. Advertisement of participation; financial reports.

Except as may be specifically authorized by rule or regulation of the department, no trust institution or foreign trust institution holding stock in a fiduciary investment company may advertise or publicize its participation in such fiduciary investment company, provided that any trust institution or foreign trust institution holding stock in a fiduciary investment company shall furnish the annual or periodic financial reports of such fiduciary investment company, on request, to any person having a beneficial interest therein and the fact of the availability of such material may be given publicity in connection with the promotion of the fiduciary services of such trust institution or foreign trust institution. (Ga. L. 1970, p. 515, § 7; Ga. L. 1971, p. 639, § 6; Code 1933, § 41A-1507, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 45 Am. Jur. 2d, Investment Companies and Advisers, § 4.



**7-1-337. Investment advisers.**

No person shall serve or act as investment adviser of a fiduciary investment company except pursuant to a written contract which has been approved by the vote of a majority of the outstanding voting securities of such fiduciary investment company and which:

- (1) Precisely describes all compensation to be paid thereunder;
- (2) Shall continue in effect for a period more than two years from the date of its execution only so long as such continuance is specifically approved at least annually by the board of directors or by vote of a majority of the outstanding voting securities of such company;
- (3) Provides, in substance, that it may be terminated at any time, without the payment of any penalty, by the board of directors of such company or by vote of a majority of the outstanding voting securities of such company on not more than 60 days' written notice to the investment adviser; and
- (4) Provides, in substance, for its automatic termination in the event of its assignment by the investment adviser. (Ga. L. 1970, p. 515, § 8; Code 1933, § 41A-1508, enacted by Ga. L. 1974, p. 705, § 1.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 45 Am. Jur. 2d, Investment Companies and Advisers, §§ 14, 19.

**7-1-338. Prohibition on refusing participation.**

No fiduciary investment company shall refuse participation to any trust institution or foreign trust institution, as defined in this part, which is otherwise qualified to engage in a fiduciary investment program. (Ga. L. 1970, p. 515, § 9; Ga. L. 1971, p. 639, § 7; Code 1933, § 41A-1509, enacted by Ga. L. 1974, p. 705, § 1.)

**PART 6****DEPOSITS, SAFE-DEPOSIT AGREEMENTS, AND MONEY RECEIVED FOR TRANSMISSION**

**Cross references.** — Powers and duties of banks and trust companies regarding intangibles taxation of money on deposit with such banks or trust companies, Ch. 1, T. 7, Art. 2, Pt. 6.

## RESEARCH REFERENCES

**ALR.** — Duty of bank to one primarily liable to apply his deposit to an indebtedness owing from him to the bank, 9 ALR 181.

Liability of bank for loss of Liberty bonds, 17 ALR 1217; 31 ALR 703; 40 ALR 899.

Levy upon or garnishment of contents of safety deposit box, 19 ALR 863; 39 ALR 1215.

Right in absence of statute to preference in respect of deposit of public funds in insolvent bank, 51 ALR 1336; 65 ALR 690; 90 ALR 184; 103 ALR 621; 167 ALR 640.

Right of one indebted to insolvent bank to set off deposits which he has made as trustee, 55 ALR 822.

Funds accepted by bank "for safe-keeping" as a special deposit, 59 ALR 448.

Examination of account, passbook, or canceled checks by bank depositor, 67 ALR 1121; 103 ALR 1147.

Trust in proceeds of collections made by charging debtor's account in collecting bank, 77 ALR 473.

Right to set off deposit in insolvent bank against indebtedness to bank, 82 ALR 665; 97 ALR 588.

Constitutionality, construction, and effect of legislation for protection of bank depositors or relief of banks or building and loan associations in need of cash or cash resources, 82 ALR 1025.

Personal liability of directors, officers, or employees of bank interfering with payment of checks or otherwise preventing or discouraging withdrawal of deposit, 97 ALR 315.

Negligence in failing to discover insolvency of bank as equivalent of knowledge, or substitute therefor, as regards criminal responsibility of bank officer or employee for receiving deposit after insolvency, 98 ALR 615.

Presumption and burden of proof, in action or proceeding against bank or its liquidator, as to reasons or justification for failure to return subject of special deposit on demand, 119 ALR 831.

Liability for loss of contents of safe-deposit box, 133 ALR 279.

Credit by bank or loan association to borrower as an incident of loan transaction as a "deposit" within statute specifically taxing deposits, 135 ALR 1480.

Deposit of fund belonging to depositor in bank account in name of himself and another, 149 ALR 879.

Parol evidence rule as applied to deposit of funds in name of depositor and another, 33 ALR2d 569.

Presumption of payment as applicable to bank deposit, 69 ALR3d 1311.

Liability of bank to joint depositor of savings account for amounts withdrawn by other joint depositor without presentation of passbook, 35 ALR4th 1094.

Liability of bank or safe-deposit company for its employee's theft or misappropriation of contents of safe-deposit box, 39 ALR4th 543.

Bank's liability to customer for imposing allegedly excessive service charges, 73 ALR4th 1028.

### 7-1-350. Notice of rules governing deposits.

A bank which has adopted rules governing deposits or withdrawal of deposits shall give notice of the rules and all changes therein to each customer whose deposits are affected by such rules, either by delivery of a copy to such customer or by posting them in a conspicuous area in the main office and in all branch offices of the bank. If such rules are stated on a signature card or other contract signed by the customer, the bank shall be deemed to have given notice of the rules for purposes of this provision even if such signature card or contract is returned to the bank. (Ga. L. 1919, p. 135, art. 19, § 47; Code 1933, § 13-2047; Code 1933, § 41A-1601, enacted by Ga. L. 1974, p. 705, § 1.)

## JUDICIAL DECISIONS

**Failure to give notice not constructive fraud.** — Even though a bank had a duty to notify its customer of a change in its signature verification procedures, where there was no evidence that the bank refrained from informing its customers in order to

induce them to take or refrain from taking any certain action, there was no showing of constructive fraud. *Eason Publications, Inc. v. Nationsbank*, 217 Ga. App. 726, 458 S.E.2d 899 (1995).

## RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 232, 609.

**ALR.** — Status of “Christmas club” deposits, 21 ALR 1128.

Crediting amount to depositor’s account as precluding recovery back of money paid to bank by mistake, 25 ALR 129.

Liability of correspondent bank to depositor in forwarding bank for breach of duty as to collection of paper, 58 ALR 764.

What amounts to a deposit within statute in relation to civil or criminal liability for accepting deposit when bank is unsafe or insolvent, 76 ALR 1320.

Trust in proceeds of collections made by charging debtor’s account in collecting bank, 77 ALR 473.

Right of depositor to rescind or claim a

trust in respect of a deposit because of insolvency of bank when it is made, 81 ALR 1078.

Validity, construction, application, and effect of agreement for, or condition of, indemnity to bank in event of payment to savings bank depositor who cannot produce passbook, 81 ALR 1150.

Agreement by depositors to prevent closing, or to assist in opening, of bank as affecting their rights or priorities in respect of their deposits, 88 ALR 1009.

Sufficiency of notice to bank of assignment of deposit, 115 ALR 328.

Effect on bank depositor’s rights and those of bank, of printed rules in passbook not expressly accepted, 60 ALR2d 708.

## 7-1-351. Minors’ deposits and safe-deposit agreements.

(a) A bank may receive deposits from:

(1) A minor; or

(2) A minor with one or more adults or other minors, as party to and with the same effect as a multiple-party account under Article 8 of this chapter.

(b) A bank or trust company may rent a safe-deposit box or other receptacle for safe deposit of property to, and receive property for safe deposit from, a minor, individually or jointly with one or more adults or other minors.

(c) A bank or trust company may deal with a minor with respect to a deposit account or safe-deposit agreement covered by subsection (a) or (b) of this Code section without the consent of a parent or guardian and with the same effect as though the minor were an adult. A parent or guardian shall not have any right in that capacity to interfere with any such transaction. Any action of the minor with respect to such deposit account or safe-deposit agreement shall be binding on the minor with the same effect as though the minor were an adult. (Ga. L. 1919, p. 135, art. 19, § 41; Code



1933, § 13-2041; Code 1933, § 41A-1602, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1977, p. 730, § 4.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 657, 853.

**ALR.** — Insurance of bank or trust company against loss by burglary or robbery as covering contents of safety deposit boxes rented to customers, 30 ALR 623.

Liability for loss of contents of safe deposit box, 42 ALR 1304, 133 ALR 279.

Presumption as to ownership of property in safe deposit box, 101 ALR 832.

### 7-1-352. Deposit by agent, trustee, or other fiduciary.

(a) Whenever any agent, administrator, executor, guardian, trustee, either express or implied, or other fiduciary, whether bona fide or mala fide, shall deposit any money in any bank to his credit as an individual, or as such agent, trustee, or other fiduciary, whether the name of the person or corporation for whom he is acting or purporting to act be given or not, such bank shall be authorized to pay the amount of such deposit, or any part thereof, upon the order of such agent, administrator, executor, guardian, trustee, or other fiduciary, signed with the name in which such deposit was entered, without being accountable in any way to the principal, cestui que trust, or other person or corporation who may be entitled to or interested in the amount so deposited.

(b) Nothing contained in this Code section shall prevent the person or corporation claiming the beneficial interest in or to any deposit in any bank from resorting to the courts to claim such deposit, provided such action is brought and served before such deposit is paid out and in accordance with the requirements of Code Section 7-1-353. (Ga. L. 1919, p. 135, art. 19, § 42; Code 1933, § 13-2042; Code 1933, § 41A-1605, enacted by Ga. L. 1974, p. 705, § 1.)

### JUDICIAL DECISIONS

**Section protects bank against breaches by corporate agent.** — Once account was properly set up by a corporation, former Code 1933, § 13-2042 (see O.C.G.A. § 7-1-352) protects bank from liability if it was without knowledge of breach of duty of agent with-drawing funds. *Trust Co. v. Nationwide Moving & Storage Co.*, 235 Ga. 229, 219 S.E.2d 162 (1975).

**Former Code 1933, § 13-2042 (see O.C.G.A. § 7-1-352) can be read to include agent with authority or implied agency to make deposits.** *Trust Co. v. Nationwide Moving & Storage Co.*, 235 Ga. 229, 219 S.E.2d 162 (1975).

**An account in a fictitious name is recognized in Georgia.** *National Factor & Inv. Corp. v. State Bank*, 224 Ga. 535, 163 S.E.2d 817 (1968).

Account can be opened in any name and bank may pay checks signed in accounts where it has no knowledge of fraudulent purpose for the account. *National Factor & Inv. Corp. v. State Bank*, 224 Ga. 535, 163 S.E.2d 817 (1968).

**Banks not required to scrutinize every check written by a fiduciary or agent.** — Former Code 1933, § 13-2042 (see O.C.G.A. § 7-1-352) is designed to protect bank from liability where agent or fiduciary misappro-

priates funds of owner in breach of agency or trust without bank's knowledge. The bank is not required to scrutinize every check written by a fiduciary or agent to see if it is written in compliance with agent's authority. *Trust Co. v. Nationwide Moving & Storage Co.*, 235 Ga. 229, 219 S.E.2d 162 (1975).

Former Code 1933, § 13-2042 (see O.C.G.A. § 7-1-352) was designed to protect bank from liability where agent or fiduciary misappropriates funds of owner in breach of agency or trust without bank's knowledge. The bank is not required to scrutinize every check written by a fiduciary or agent to see if it is written in compliance with agent's authority. *Flo-Control, Inc. v. Northeast Bank*, 150 Ga. App. 880, 258 S.E.2d 695 (1979); *National Bank v. Weiner*, 180 Ga. App. 61, 348 S.E.2d 492 (1986).

**If agent has authority to open account and issue checks, bank is protected.** — If agent was proven to have had either authority or inherent agency power to open account, then bank can rely on protection of former Code 1933 § 13-2042 (see O.C.G.A. § 7-1-352) if agent also had authority to issue checks. *Trust Co. v. Nationwide Moving & Storage Co.*, 235 Ga. 229, 219 S.E.2d 162 (1975).

**Bank was protected from liability for conversion of checks deposited into a corporate account where the agent who made the deposits and later withdrew them had presented documents to the bank, including a certificate bearing the corporate seal and naming the agent as an officer of the corporation, which appeared to give the agent very broad authorization.** *Service Lines v. Trust Co. Bank*, 189 Ga. App. 891, 377 S.E.2d 872, cert. denied, 189 Ga. App. 913, 377 S.E.2d 872 (1989).

**General manager may have authority or inherent agency to arrange for handling of corporate funds.** *Trust Co. v. Nationwide Moving & Storage Co.*, 235 Ga. 229, 219 S.E.2d 162 (1975).

**Trust company cannot rely solely on general manager's position.** — A trust company does not have right to rely solely on general manager's position as general manager for power to set up corporate bank account and to withdraw corporate funds without a proper corporate resolution. *Trust Co. v. Nationwide Moving & Storage Co.*, 235 Ga. 229, 219 S.E.2d 162 (1975).

**Corporate resolution is not exclusive method for conferring authority.** — While a bank could easily protect its interests by requiring a proper corporate resolution showing an agent's authority to act for the corporation, that method is not the exclusive one for establishing the existence either of authority or of inherent agency power to open a bank account for the corporation. *Trust Co. v. Nationwide Moving & Storage Co.*, 235 Ga. 229, 219 S.E.2d 162 (1975).

**Chief executive officer's authority.** — Where evidence showed that a chief executive officer had the inherent agency power to open accounts and withdraw deposited funds, the bank was not liable for alleged conversions of funds by the officer on the basis that it did not require a corporate resolution or certificate of authority to open the accounts. *Family Partners Worldwide, Inc. v. Suntrust Bank*, 242 Ga. App. 618, 530 S.E.2d 742 (2000).

**This section does not violate U.S. Const., Amend. XIV, Sec. 1, or Ga. Const. 1983, Art. I, Sec. I, Para. II.** — Former Code 1933, § 13-2042 (see O.C.G.A. § 7-1-352(a)) was not unconstitutional under U.S. Const., Art. XIV, Sec. 1, and Ga. Const. 1976, Art. I, Sec. II, Para. III (see Ga. Const. 1983, Art. I, Sec. I, Para. II), as violating equal protection and impartial protection of property, nor did it violate Ga. Const. 1976, Art. I, Sec. I, Para. VII (see Ga. Const. 1983, Art. I, Sec. I, Para. X) prohibitions against grants of special privileges or immunities. *National Factor & Inv. Corp. v. State Bank*, 224 Ga. 535, 163 S.E.2d 817 (1968).

**Former Code 1933, § 13-2042 (see O.C.G.A. § 7-1-352) not unconstitutional as a special law enacted in derogation of a general law.** *National Factor & Inv. Corp. v. State Bank*, 224 Ga. 535, 163 S.E.2d 817 (1968).

**Circumstances required to charge bank with notice of misappropriation.** — See *National Factor & Inv. Corp. v. State Bank*, 224 Ga. 535, 163 S.E.2d 817 (1968).

**Mere fact that a fiduciary deposits in bank to the fiduciary's individual account a check drawn by the fiduciary in a fiduciary capacity, or transfers funds by check from an account in the bank in the fiduciary's own name as a fiduciary to a personal account in the bank, will not of itself charge the bank with knowledge or notice that the fiduciary**

is misappropriating or will misappropriate such funds. *Citizens Bank v. Middlebrooks*, 209 Ga. 330, 72 S.E.2d 298 (1952).

**Trust funds.** — Under this O.C.G.A. § 7-1-352, a bank incurs no liability for the uses to which trust funds are applied after they are withdrawn. On the other hand, the statute contains no language protecting the bank against liability for honoring forged or otherwise improper checks or endorsements. *Trust Co. Bank v. Henderson*, 258 Ga. 703, 373 S.E.2d 738 (1988).

**O.C.G.A. § 7-1-352 did not apply** where the claim against the bank was based on the bank's acceptance for deposit into an employee's personal checking account of checks made payable to the employer, and the employee knowingly signed and presented the checks so as to give the appearance of authority from the employer. *Trust*

*Co. Bank v. Henderson*, 185 Ga. App. 367, 364 S.E.2d 289 (1987), *aff'd*, 258 Ga. 703, 373 S.E.2d 738 (1988).

While O.C.G.A. § 7-1-352 protects banks from liability when allowing withdrawals and paying accounts ordered to be paid by the persons who have previously deposited such money, it is not applicable where the amount ordered to be transferred was not initially deposited by a temporary administratrix but instead was deposited by the deceased. *Kelly v. Citizens & S. Nat'l Bank*, 160 Ga. App. 405, 287 S.E.2d 343 (1981).

**Cited in** *First Nat'l Bank v. Rapides Bank & Trust Co.*, 145 Ga. App. 514, 244 S.E.2d 51 (1978); *Louis v. Citizens & S. Bank*, 189 Ga. App. 164, 375 S.E.2d 82 (1988); *Grogan v. Lanier Bank & Trust Co.*, 219 Ga. App. 313, 464 S.E.2d 892 (1995).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am Jur. 2d, Banks, § 504.

**ALR.** — Deposit to individual account of checks or notes drawn or endorsed by agent or fiduciary, as charging bank with notice of misappropriation, 64 ALR 1404; 106 ALR 836; 115 ALR 648.

Trust or preference in assets of insolvent bank in respect of money deposited or left on deposit pursuant to agreement of bank to

purchase bonds or make other investments for depositor, 82 ALR 1292; 105 ALR 516.

Liability of guardian for loss of funds deposited in bank in form which discloses trust or fiduciary character, 90 ALR 641.

Payee's and drawer's right of recovery, in conversion under pre-1990 UCC § 3-419, or post-1990 UCC § 3-420, for money paid on unauthorized endorsement, 91 ALR5th 89.

#### 7-1-353. Adverse claims to deposits and property held in safe deposit.

(a) Except as provided in subsections (b) and (c) of this Code section, a bank or trust company shall not be required to deny control over or access to a deposit account or property held in safe deposit (whether by the bank or trust company or in a safe-deposit box or other receptacle leased to a customer) to:

(1) The customer in whose name the account or property is held by the bank or trust company (including one of two depositors or lessees entitled to such control or access by virtue of their contract with the bank or trust company); or

(2) A person or group of persons who is authorized to draw on or control the account or property pursuant to a certified corporate resolution or other written arrangement with the customer currently on file with the bank or trust company.

(b) A bank shall be entitled to act and rely upon:



- (1) A court order, distraint, levy, or other effective legal process;
- (2) An agreement of the parties concerning an adverse claim; or
- (3) A claim of the type described in subsection (a) of this Code section accompanied by a bond or other indemnity adequate to protect the bank or trust company from loss as a consequence of recognizing an adverse claim.

(c) Nothing in this Code section shall impair the effect of a discharge which a bank or trust company would be entitled to under Code Section 11-3-602. (Code 1933, § 41A-1606, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1984, p. 22, § 7; Ga. L. 1997, p. 143, § 7.)

**Cross references.** — Disposition of property held in safe deposit box or held for safekeeping by financial institution for which department acts as receiver, § 7-1-172.

### JUDICIAL DECISIONS

**IRS levy.** — A bank did not violate this section by denying a depositor control over his bank account when it surrendered money in the depositor's account pursuant to an IRS levy. *Dean v. NationsBank*, 226 Ga. App. 370, 486 S.E.2d 647 (1997).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1016 et seq., 1023.

**C.J.S.** — 93 C.J.S. (Rev), Warehousemen and Safe Depositaries, § 141.

**ALR.** — Levy upon or garnishment of contents of safety deposit box, 11 ALR 225; 19 ALR 863; 39 ALR 1215.

Crediting amount to depositor's account as precluding recovery back of money paid to bank by mistake, 25 ALR 129.

Insurance of bank or trust company against loss by burglary or robbery as covering contents of safety deposit boxes rented to customers, 30 ALR 623.

Liability for loss of contents of safe-deposit box, 42 ALR 1304; 133 ALR 279.

Duty of bank to sureties or endorsers as to application of general deposit by principal, 70 ALR 339.

Right of bank to charge depositor's indebtedness against deposit account without first exhausting collateral, 96 ALR 1240.

Presumption as to ownership of property in safe deposit box, 101 ALR 832.

Garnishment of bank deposit as affected by bank's right, or waiver of right, to set off depositor's indebtedness to it against deposit or apply deposit to such indebtedness, 106 ALR 62; 110 ALR 1268.

Conflict of laws as to disposition of and relative rights to bank deposits in the names of more than one person, 25 ALR2d 1240.

### 7-1-354. Money received for transmission.

(a) A bank or trust company which receives money for transmission shall give the customer a receipt setting forth:

- (1) The date of receipt of the money;
- (2) The amount of the money in dollars and cents; and
- (3) If the money is to be transmitted to a foreign country in the currency of such country, the amount of the money in such currency.

(b) In an action by a customer against a bank or trust company for recovery of money delivered for transmission, the burden of proof of delivery of the money in accordance with the instructions of the customer shall be on the bank or trust company; but an affidavit by an agent or correspondent of the bank or trust company that the money was delivered in accordance with the customer's instructions shall be prima-facie evidence of the delivery of the money in accordance with the customer's instructions. (Code 1933, § 41A-1607, enacted by Ga. L. 1974, p. 705, § 1.)

**Cross references.** — Persons, corporations, etc., engaging in business of receiving cash from patrons as payment of obligations

owed by such patrons to third parties, § 10-6-100 et seq.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 792, 802.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 445-451, 486.

**ALR.** — Liability of correspondent bank to depositor in forwarding bank for breach of duty as to collection of paper, 58 ALR 764.

Trust or preference in respect of money used to purchase exchange or to be transmitted, 84 ALR 1470; 93 ALR 938; 101 ALR 631.

Agreement by bank to transmit excess of deposit over specified amount as giving rise to a trust or preference in event of insolvency of bank, 89 ALR 1287.

Bank depositor's act in seeking restitution from third person to whom, or for benefit of whom, the bank has paid out the deposit, as election of remedy precluding action against bank, 144 ALR 1440.

### 7-1-355. Agreements concerning safe deposits.

A bank, trust company, building and loan association, or savings and loan association may receive property for safe deposit and rent out receptacles and safe deposit boxes on the terms and conditions prescribed by it; but such terms and conditions shall not bind any customer to whom the bank, trust company, building and loan association, or savings and loan association does not give notice thereof either by delivery of a copy or by posting in its offices where such receptacles or safe-deposit boxes are located, or who does not otherwise agree to such terms and conditions. (Code 1933, § 41A-1608, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1978, p. 1717, § 4.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1013, 1018, 1019.

**C.J.S.** — 93 C.J.S. (Rev), Warehousemen and Safe Depositaries, §§ 138, 139.

**ALR.** — Insurance of bank or trust company against loss by burglary or robbery as

covering contents of safety deposit boxes rented to customers, 30 ALR 623.

Liability for loss of contents of safe-deposit box, 42 ALR 1304; 133 ALR 279.

Presumption as to ownership of property in safe deposit box, 101 ALR 832.

**7-1-356. Procedures on death or incompetence of safe depositor.**

(a) Any financial institution contracting with a person for the use of a safe-deposit box or receiving property from a person for safekeeping, upon presentation of satisfactory proof of the death or legal incompetence of such person, shall permit any person named in an order granted by the probate court having jurisdiction of such person's estate to open and examine the contents of any safe-deposit box leased by the decedent or legally incompetent person or to examine the property left by such person for safekeeping, in the presence of an officer of the financial institution. The financial institution, if so requested by such person, shall deliver:

(1) Any writing purporting to be a will of the decedent to the probate court having jurisdiction of the decedent's estate;

(2) Any writing purporting to be a deed to a burial plot or to give burial instructions to the person named in such order;

(3) Any document purporting to be an insurance policy on the life of the decedent to the beneficiary named therein;

but no other contents shall be removed pursuant to this Code section.

(b) Within five banking days after the order of the court is presented to the financial institution, the financial institution shall permit the person named in such order to inventory the contents of any safe-deposit box leased or rented to the decedent or legally incompetent person or the property left by such person for safekeeping. The inventory shall be conducted in the presence of an officer or employee of the financial institution by the person named in such order. The inventory shall be signed by such persons, and a copy thereof shall be retained by the financial institution and may be filed with the probate court.

(c) The financial institution shall be free from all liability with respect to any action, claim, or demand of whatever nature asserted by any heir, legatee, distributee, creditor, administrator, executor, guardian, trustee, or other fiduciary or by any person whomsoever when acting pursuant to such letters of authority.

(d) Upon presentation of a certified copy of his letters of authority, the financial institution shall grant the personal representative access to any safe-deposit box or property in safekeeping in the sole name of a decedent or legally incompetent person to permit him to remove from such box or place of safekeeping any part or all of the property therein without liability. (Ga. L. 1972, p. 437, §§ 1-4; Code 1933, § 41A-1609, enacted by Ga. L. 1974, p. 705, § 1.)

**Cross references.** — Opening of safe deposit box on authorization of fiduciary, § 53-7-5.



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1014, 1017, 1023.

**C.J.S.** — 93 C.J.S. (Rev), Warehousemen and Safe Depositaries, §§ 141, 142.

**ALR.** — Insurance of bank or trust company against loss by burglary or robbery as

covering contents of safety deposit boxes rented to customers, 30 ALR 623.

Liability for loss of contents of safe deposit box, 42 ALR 1304; 133 ALR 279.

Presumption as to ownership of property in safe deposit box, 101 ALR 832.

### 7-1-357. Payment of deposit of deceased depositor; deposit by nursing home of moneys left in its possession upon death of resident.

Reserved. Repealed by Ga. L. 1983, p. 661, § 2, effective July 1, 1983.

**Editor's notes.** — The former Code section was based on Ga. L. 1919, p. 135, art. 19, § 48; Ga. L. 1927, p. 195, § 11; Code 1933, § 13-2048; Ga. L. 1943, p. 253, § 1; Ga. L. 1952, p. 189, § 1; Ga. L. 1955, p. 202, § 1; Code 1933, § 41A-1610, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 21;

Ga. L. 1976, p. 1388, § 3; Ga. L. 1981, p. 848, § 1.

Code Section 7-1-357 was repealed by Ga. L. 1983, p. 661, § 2, effective July 1, 1983. For present provisions as to payment of large deposits of deceased intestate depositors, see Code Section 7-1-239.

### 7-1-358. Dormant accounts.

In accordance with and subject to the limitation of such regulations as the department may prescribe, a bank may, from time to time, charge a dormant account a reasonable service charge. (Code 1933, § 13-2067, enacted by Ga. L. 1966, p. 590, § 10; Code 1933, § 41A-1611, enacted by Ga. L. 1974, p. 705, § 1.)

## JUDICIAL DECISIONS

**Dormant checks, money orders, and drafts deemed "dormant accounts."** — O.C.G.A. § 7-1-358 and a related regulation do not allow assessment of service charges only against dormant deposit accounts; thus, charges against dormant checks, money orders, and drafts qualified as "lawful charges"

and were properly withheld from the Department of Revenue when funds were remitted under the Unclaimed Property Act, O.C.G.A. Art. 5, Ch. 12, T. 44. *First Union Nat'l Bank v. Collins*, 221 Ga. App. 442, 471 S.E.2d 892 (1996).

## OPINIONS OF THE ATTORNEY GENERAL

**Repeals contrary provision in Disposition of Unclaimed Property Act.** — This section repealed by implication the prohibition against the imposition of service charge on

dormant bank accounts contained in the Disposition of Unclaimed Property Act (see O.C.G.A. Art. 5, Ch. 12, T. 44). 1975 Op. Att'y Gen. No. 75-128.

### 7-1-359. Fee prohibited for conducting search of dormant, abandoned, or unclaimed deposit accounts; commission or finder's fee allowed.

No person shall charge a fee or solicit any other form of compensation for the purpose of conducting a search for dormant, abandoned, or

unclaimed deposit accounts or other abandoned properties whether held by a financial institution or escheated to any governmental agency. Notwithstanding the foregoing, a commission or finder's fee not to exceed 10 percent of actual sums recovered by the owner of such accounts may be agreed to by the parties. All moneys and properties located by a person to be compensated by the payment of such a commission or finder's fee shall be paid directly to the owner and may not be paid over to the person to receive the commission or finder's fee whether pursuant to a duly executed power of attorney or otherwise. (Code 1981, § 7-1-359, enacted by Ga. L. 1989, p. 1211, § 6.)

**7-1-360. Third party claims; notification of disclosure by third party to depositor; motion to quash disclosure.**

(a) No financial institution shall be required to recognize the claim of any third party to any deposit, or withhold payment of any deposit to the depositor or to his order, unless and until the financial institution is served with citation, order, or other appropriate process issuing out of a court of competent jurisdiction in connection with a suit instituted by such third party for the purpose of recovering or establishing an interest in such deposit. Neither shall any financial institution be required to disclose or produce to third parties, or permit third parties to examine any records pertaining to a deposit account, loan account, or other banking relationship except:

(1) Where the financial institution itself is a proper or necessary party to a proceeding in a court of competent jurisdiction;

(2) Where the records of accounts or other customer records are requested through subpoena or other administrative process issued by a state, federal, or local administrative agency having competent jurisdiction over the depositor or other customer;

(3) Where the records of accounts or other customer records are requested in conjunction with an ongoing criminal or tax investigation of the depositor or other customer by a state or federal grand jury, taxing authority, or law enforcement agency; or

(4) Where the records of accounts or other customer records are requested by any state or federal regulatory agency having jurisdiction over the financial institution.

(b) Unless directed otherwise by a court of competent jurisdiction, before disclosure, production, or examination of records produced under paragraph (1) or (2) of subsection (a) of this Code section, the agency or other party seeking the disclosure or production of the records shall provide notification to the depositor or other customer of such request. Notification of the depositor or other customer under circumstances set

forth in paragraphs (3) and (4) of subsection (a) of this Code section shall not be made without the consent of the requesting authority. For purposes of ascertaining whether or not proper notice has been given or whether or not the depositor or other customer may be notified, the financial institution may rely upon appropriate certification or written assurances from the requesting party and in doing so shall be relieved of any liability which might be asserted in connection with such disclosures.

(c) Each customer or depositor to whom notice of an order, subpoena, or request for disclosure, examination, or production of records was lawfully given may, prior to the date specified therein for disclosure, examination, or production, file in the court issuing an order or subpoena for the records or, in the absence of such a court, in the superior court of the county in which the financial institution is located a motion to quash the order, subpoena, or request or for a protective order and shall serve such motion on the party requesting disclosure as otherwise provided by law for similar motions. Failure to file and serve such motion to quash or for protection shall constitute consent for all purposes to disclosure, production, or examination made pursuant to this Code section. (Code 1981, § 7-1-360, enacted by Ga. L. 1989, p. 1211, § 6.)

### JUDICIAL DECISIONS

**Section not intended to hinder discovery as to fair market value.** — O.C.G.A. § 7-1-360 is intended to protect confidential banking records. It is not intended to hinder proper discovery in a lawsuit concerning the fair market value of taxable property, especially when the documents sought may contain evidence, including admissions by the taxpayer, as to the value of the property. *Clayton County Bd. of Tax Assessors v. Lake Spivey Golf Club, Inc.*, 207 Ga. App. 693, 428 S.E.2d 687 (1993).

**Relevance of financial condition.** — Trial court did not err in admitting banking records for accounts belonging to defen-

dant, as evidence of defendant's financial condition was admissible regarding defendant's reason for stabbing the victim, a fellow soldier, and grabbing for the victim's money; accordingly, defendant's argument that the admission of defendant's bank records was improper pursuant to O.C.G.A. § 7-1-360 had to be rejected since that statute merely discussed the right of financial institutions to provide certain financial information to third parties where the records were requested by certain individuals or entities for certain purposes. *Stogisavljevic v. State*, 259 Ga. App. 306, 577 S.E.2d 18 (2003).

### RESEARCH REFERENCES

**ALR.** — Bank's liability, under state law, for disclosing financial information con-

cerning depositor or customer, 81 ALR4th 377.



## PART 7

## BANKING DEPOSITORIES, RESERVES, AND REMISSIONS

**7-1-370. Deposits by banks.**

(a) Subject to the restrictions of subsection (b) of this Code section and of Code Section 7-1-371 in regard to reserve funds, a bank may deposit its funds in any depository which is:

- (1) Selected by, or in any manner authorized by, its directors;
- (2) Authorized by law to receive deposits; and

(3) In the case of a depository located in the United States, one which has deposit insurance issued by or equivalent to deposit insurance provided by a federal public body to depositories of the type involved.

(b) If a director of the bank has a relationship to a depository as either:

- (1) An officer or director; or
- (2) An owner of 5 percent or more of the shares of the depository,

the depository shall be approved by a majority of the directors other than the director who has such relationship. (Code 1933, § 41A-1701, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 10; Ga. L. 1997, p. 485, § 14.)

**OPINIONS OF THE ATTORNEY GENERAL**

**This section is broad enough to cover a savings and loan account as a deposit.** — Former Code 1933, § 41A-1309 (see O.C.G.A. § 7-1-288) was directed at a bank's long-term investment in capital stocks and securities in its own name, while former Code 1933, § 41A-1701 (see O.C.G.A. § 7-1-370) was directed at a bank's short-term deposits in other financial institutions. The language of former Code 1933, § 41A-1701 (see O.C.G.A. § 7-1-370) was broad enough to cover a savings and loan account as a deposit, therefore, former Code 1933, § 41A-1309 (see O.C.G.A. § 7-1-288) was inapplicable to deposits in mutual sav-

ings and loan associations and former Code 1933, § 41A-1701 (see O.C.G.A. § 7-1-370) permitted banks to deposit their funds in these associations. Since Georgia Supreme Court has not ruled on the question of whether such a deposit was equivalent to purchase of shares in a corporation, federal law will not permit a state bank member of the federal reserve to make deposits in a Georgia building and loan association; however, there was no reason why a state bank which is not a member of the federal reserve cannot deposit its funds in a state association. 1978 Op. Att'y Gen. No. 78-66.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 47, 56, 57.

11 Am. Jur. 2d, Banks and Financial Institutions, § 1103.

**7-1-371. Legal reserve requirements; notice of deficiency; penalty; effect of deficiency.**

(a) For the purposes of the reserve requirement imposed by subsection (b) of this Code section and the composition of the required reserve fund under subsection (d) of this Code section, the term:

(1) "Demand deposits" means the aggregate of deposits which can be required to be paid on demand or within less than 30 days after demand;

(2) "Reserve agent" means a depository of a bank selected as provided in Code Section 7-1-370 and approved by the department for the deposit of funds included in the required reserve fund.

(b) A bank which is not a member of the Federal Reserve System shall maintain at all times a reserve fund in an amount fixed by regulation of the department; but in no case shall such reserve be required in excess of:

(1) In the case of a savings bank, 5 percent of total deposits; and

(2) In the case of a commercial bank, the aggregate of 15 percent of demand deposits and 5 percent of other deposits.

The amount of the required reserve for each day shall be computed on the basis of average daily deposits covering such biweekly or shorter periods as shall be fixed by regulation of the department.

(c) A bank which is a member of the Federal Reserve System shall maintain at all times a reserve fund in accordance with the requirements applicable to a member bank under the laws of the United States.

(d) In the case of a commercial bank, such portion of the reserve fund against deposits as shall be fixed by regulation of the department shall consist of United States coin and currency on hand or on deposit, subject to call without notice, in a reserve agent. The balance of such reserve fund shall be kept in obligations of:

(1) The United States, the Federal National Mortgage Association, a federal land bank, a federal home loan bank, a bank for cooperatives, a federal intermediate credit bank, or the State of Georgia; or

(2) Other issuers whose obligations are marketable and approved by regulation of the department for the purpose of this Code section.

(e) In the case of a savings bank, the reserve fund shall consist of:

(1) United States coin and currency on hand or on deposit, subject to call without notice, in a reserve agent, in a total amount not less than 1 percent of the deposits of the savings bank; and

(2) Securities permitted under subsection (d) of this Code section.

(f) All assets which are part of the reserve fund shall be owned absolutely by the bank and shall not be pledged, assigned, or hypothecated in any manner or subject to setoff. The value of all securities which constitute a part of a bank's reserve fund shall be computed at the current market value thereof.

(g) A bank shall give written notice to the department, in the manner prescribed by the department for such notice, of any deficiency in the amount or form of the reserve fund required by this Code section within three business days after the close of any scheduled averaging period during which such deficiency occurs. A bank shall pay to the department a penalty of \$50.00 for each day after the time fixed for the giving of notice in which it fails to give such notice, provided that the department may relieve a bank of this penalty for good cause shown.

(h) Immediately following the closing of any scheduled averaging period during which a deficiency in the required reserve occurs, the bank will take immediate action to restore the deficiency; and, until such deficiency is restored, the bank shall not make any new loans or discounts other than by discounting or purchasing bills of exchange at sight; nor shall any dividend be declared out of the profits of such bank. Any bank failing to restore its reserve to the required amount within 30 days after the closing of the averaging period in which the deficiency occurs may have its business and assets taken over by the department as provided in Part 7 of Article 1 of this chapter. (Ga. L. 1919, p. 135, art. 19, §§ 27, 28; Ga. L. 1920, p. 102, § 1; Code 1933, §§ 13-2027, 13-2028; Ga. L. 1939, p. 360, §§ 1, 2; Ga. L. 1966, p. 692, § 50; Ga. L. 1967, p. 798, §§ 1, 2; Ga. L. 1969, p. 126, § 1; Ga. L. 1973, p. 526, §§ 6, 7; Code 1933, § 41A-1702, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 22.)

**Administrative rules and regulations.** — Rules governing legal reserves, Official Compilation of Rules and Regulations of State of

Georgia, Rules of Department of Banking and Finance, Chapter 80-1-7.

#### RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking, § 23.

**ALR.** — Rights and preference in respect

of assets of insolvent bank or trust company as affected by its division into departments, 89 ALR 1218; 114 ALR 680.

#### **7-1-372. Remission of checks at par; collection charge; service charge.**

A commercial bank shall pay all checks drawn on it at par and shall make no charge for the payment of such checks; provided, however, it may deduct a reasonable collection charge covering its actual expenses from the remittance for any check forwarded to it for collection and remittance as a special collection item and may impose a service charge as authorized by Code Section 44-12-196, relating to when an instrument on which a banking



or financial organization is directly liable is presumed abandoned. (Ga. L. 1919, p. 135, art. 19, §§ 27, 28; Ga. L. 1920, p. 102, § 1; Code 1933, §§ 13-2027, 13-2028; Ga. L. 1939, p. 360, §§ 1, 2; Ga. L. 1966, p. 692, § 50; Ga. L. 1967, p. 798, §§ 1, 2; Ga. L. 1969, p. 126, § 1; Ga. L. 1973, p. 526, §§ 6, 7; Code 1933, § 41A-1703, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1995, p. 1368, § 2.)

**Cross references.** — Bank deposits and collections generally, Art. 4, T. 11.

### JUDICIAL DECISIONS

**Preempted by federal law.** — Since the court found that O.C.G.A. §§ 7-1-239.5 and 7-1-372 were in direct conflict with 12 U.S.C.S. § 24 and 12 C.F.R. § 7.4002(a) under the National Bank Act, 12 U.S.C.S. § 21 et seq., the state statutes were preempted, and the court granted the bank's Fed. R. Civ. P. 56 motion. *Bank of Am., N.A. v. Sorrell*, 248 F. Supp. 2d 1196 (N.D. Ga. 2002).

**"Lawful charges" against dormant checks, money order, and drafts.** — O.C.G.A.

§ 7-1-358 and a related regulation do not allow assessment of service charges only against dormant deposit accounts; thus, charges against dormant checks, money orders, and drafts qualified as "lawful charges" and were properly withheld from the Department of Revenue when funds were remitted under the Unclaimed Property Act, O.C.G.A. Art. 5, Ch. 12, T. 44. *First Union Nat'l Bank v. Collins*, 221 Ga. App. 442, 471 S.E.2d 892 (1996).

### OPINIONS OF THE ATTORNEY GENERAL

**This title does not restrict how banks treat items for collection.** — Neither former Code 1933, Title 41A nor Title 109A (see O.C.G.A. Title 7 nor Title 11) restricted in any way a bank's freedom to decide how it will treat any particular collection item, whether it be

a check or a credit union share draft. 1977 Op. Att'y Gen. No. 77-2.

**Banks not required to process credit union share drafts as cash items,** rather than as drafts for collection. 1977 Op. Att'y Gen. No. 77-2.

### RESEARCH REFERENCES

**ALR.** — Priority as between checks simultaneously presented to drawee bank for payment, 61 ALR 960.

Liability of bank which diverts checks or drafts drawn to its order to a use other than that of the drawer, 82 ALR 1372.

Discharge of drawer or endorser of check by holder's acceptance therefor of something other than money, 87 ALR 442.

Duty and liability of bank in respect of a depositor's check drawn upon and payable to the bank, 138 ALR 853.

Constitutionality, construction, and application of statutes requiring clearance of checks at par, 174 ALR 869.

## PART 8

### INCORPORATION OF BANKS AND TRUST COMPANIES

**Cross references.** — Incorporation of Secretary of State corporations generally, § 14-4-21 et seq.

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the issues dealt with by the provisions, decisions under former Ga. L. 1919, p. 135 are included in the annotations for this part.

**Trust company not a chartered bank within penal laws.** — A trust company incor-

porated under provisions of Ga. L. 1919, p. 135 is not a chartered bank, within meaning of penal laws of this state relating only to such banks. *Dunn v. State*, 13 Ga. App. 314, 79 S.E. 170 (1913).

## 7-1-390. Incorporators.

One or more natural persons 18 years of age or over may act as incorporators of a bank or trust company. (Ga. L. 1898, p. 78, § 1; Civil Code 1910, § 2815; Ga. L. 1919, p. 135, art. 8, § 1; Ga. L. 1920, p. 102, § 1; Ga. L. 1927, p. 195, § 7; Ga. L. 1931, p. 156, § 1; Code 1933, §§ 13-901, 109-101; Ga. L. 1935, p. 101, § 1; Ga. L. 1941, p. 312, § 1; Ga. L. 1943, p. 249, § 1; Ga. L. 1965, p. 501, § 1; Ga. L. 1966, p. 463, § 1; Ga. L. 1966, p. 692, § 7; Ga. L. 1972, p. 384, § 1; Ga. L. 1972, p. 727, § 1; Code 1933, § 41A-1801, enacted by Ga. L. 1974, p. 705, § 1.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 18A Am. Jur. 2d, Corporations, §§ 189, 190.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 19, 748. 18 C.J.S., Corporations, § 35.

**7-1-390.1. Organization of bank or trust company as limited liability company; promulgation of rules and regulations governing.**

(a) Subject to the requirements and restrictions of this chapter including, but not limited to, deposit insurance requirements where applicable, a bank or trust company may organize as a limited liability company pursuant to Chapter 11 of Title 14.

(b) The department shall have the authority to promulgate rules and regulations in accordance with Code Section 7-1-3 specifying the conditions under which a bank or trust company may organize as a limited liability company.

(c) To the extent the provisions of Chapter 11 of Title 14 are consistent with and not in conflict with the provisions of this chapter and the rules and regulations of the department, such provisions shall apply to a bank or trust company that has organized as a limited liability company. (Code 1981, § 7-1-390.1, enacted by Ga. L. 2003, p. 843, § 4.)

**Effective date.** — This Code section became effective July 1, 2003.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Banking Institutions, § 109 et seq.

**7-1-391. Prohibition of promoters' fees.**

(a) A bank or trust company shall not pay any fee, compensation, or commission for promotion in connection with its organization or apply any money received on account of shares or subscriptions, selling shares, or other services in connection with its organization, except legal fees, commissions or fees to disinterested third parties for sale of bank stock to others, and other usual and ordinary expenses necessary for its organization.

(b) A majority of incorporators shall file with the department at the time of filing of the articles an affidavit:

(1) Setting forth all expenses incurred or to be incurred in connection with the organization of the bank or trust company, subscription for its shares, and sale of its shares; and

(2) Stating that no fee, compensation, or commission prohibited by subsection (a) of this Code section has been paid or incurred.

(c) In the event of a violation of this Code section the department may disapprove the articles on account of such violation. (Code 1933, § 41A-1802, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1999, p. 674, § 7.)

## JUDICIAL DECISIONS

**Cited in** O'Neal v. Home Town Bank, 237 Ga. App. 325, 514 S.E.2d 669 (1999).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 181. 18 Am. Jur. 2d, Corporations, §§ 102, 103, 146.

**C.J.S.** — 18 C.J.S., Corporations, § 145.

**7-1-392. Articles of incorporation; advertisement of articles or notice of application; naming registered agent.**

(a) The articles of incorporation shall be signed by each of the incorporators and shall set forth in the English language:

(1) The name of the bank or trust company;

(2) The street address and county where the main office will be located;



(3) For institutions chartered after July 1, 1998, the name of the initial registered agent;

(4) The street address where its initial registered office will be located;

(5) A brief statement of the purpose or purposes for which it is incorporated, that it is incorporated under this chapter, and whether it shall be solely a bank, solely a trust company, or both a bank and trust company;

(6) The term for which it is to exist, which shall be perpetual unless otherwise limited;

(7) The aggregate number of shares which the bank or trust company shall have authority to issue, and:

(A) If the shares are to consist of one class only, the par value of each of the shares; or

(B) If the shares are to be divided into classes, the number of shares of each class, the par value of each share of each class, a description of each class, and a statement of the preferences, redemption provisions, qualifications, limitations, restrictions, and the special or relative rights granted to or imposed upon the shares of each class;

(8) The name, place of residence, and post office address of each incorporator;

(9) The name, occupation, citizenship, place of residence, and post office address of each of the first directors, which number shall not be less than five; and

(10) Any provision not inconsistent with law which the incorporators may choose to insert for the regulation of the internal affairs and business of the bank or trust company.

(b) It shall not be necessary to set forth in the articles any of the corporate or operational powers set forth in this chapter.

(c) The incorporators shall file with the department, in triplicate, the articles, together with the fee required by Code Section 7-1-862. Such filing shall constitute an application for a certificate of incorporation. Immediately upon the filing of the articles, the department shall certify one copy thereof and return it to the applicants, who shall, in conformity with Code Section 7-1-7 and on the next business day following the filing of the articles, transmit for publication a copy of the articles or, in lieu thereof, a statement in substantially the following form:

“An application for a certificate of incorporation of a (bank, trust company, or bank and trust company) to be known as the \_\_\_\_\_ and to be located at \_\_\_\_\_ in \_\_\_\_\_ County, Georgia, will be made to the Secretary of State of Georgia by (names and addresses of incorporators)

in accordance with Chapter 1 of Title 7 of the Official Code of Georgia Annotated, known as the 'Financial Institutions Code of Georgia.' A copy of the articles of incorporation of said proposed (bank, trust company, or bank and trust company) and the application have been filed with the Department of Banking and Finance. The following persons have been proposed as the initial directors: (names and addresses of proposed directors)."

to the newspaper which is the official organ of the county where the main office will be located. The articles or the statement must be published once a week for two consecutive weeks with the first publication occurring within ten days of receipt by the newspaper of the articles or statement.

(d) A registered agent shall be named for each financial institution that is a corporation, and each financial institution shall inform the department and the Secretary of State of its current registered agent. (Ga. L. 1898, p. 78, §§ 1, 2; Civil Code 1910, §§ 2815, 2816; Ga. L. 1919, p. 135, art. 8, §§ 1-3; Ga. L. 1920, p. 102, § 1; Ga. L. 1927, p. 195, § 7; Ga. L. 1931, p. 156, § 1; Code 1933, §§ 13-901, 13-902, 13-903, 109-101, 109-102; Ga. L. 1935, p. 101, § 1; Ga. L. 1941, p. 312, § 1; Ga. L. 1943, p. 249, § 1; Ga. L. 1952, p. 193, § 1; Ga. L. 1965, p. 501, § 1; Ga. L. 1966, p. 463, § 1; Ga. L. 1966, p. 692, §§ 7-9; Ga. L. 1972, p. 384, § 1; Ga. L. 1972, p. 727, § 1; Code 1933, § 41A-1803, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 5; Ga. L. 1998, p. 795, § 15.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1989, "have been filed" was substituted for "has been filed" in the next to last sentence of the form in subsection (c).

Pursuant to Code Section 28-9-5, in 1998, a colon was added at the end of paragraph (a)(7).

JUDICIAL DECISIONS

**Writ of mandamus may lie to compel issuance of certificate of incorporation** upon compliance with statutory require-

ments. *Manley v. McLendon*, 158 Ga. 659, 124 S.E. 138 (1924).

RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 170 et seq.

**C.J.S.** — 18 C.J.S., Corporations, §§ 56, 58, 176, 177, 245.

7-1-393. Additional filings with department; fees.

The incorporators shall also file with the department:

- (1) Information desired by the department in order to evaluate the proposed institution which shall be made available in the form specified by the department;
- (2) The affidavit required by Code Section 7-1-391;

(3) A certificate of the Secretary of State showing that the proposed name of the bank or trust company has been reserved pursuant to Code Section 7-1-131; and

(4) Applicable fees established by regulation of the department to defray the expense of the investigation required by Code Section 7-1-394. (Ga. L. 1919, p. 135, art. 8, § 4; Code 1933, § 13-904; Ga. L. 1955, p. 201, § 1; Ga. L. 1964, p. 689, § 1; Ga. L. 1966, p. 692, § 10; Ga. L. 1972, p. 727, § 2; Code 1933, § 41A-1804, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-394. Investigation; approval or disapproval by department; abbreviated procedures.**

(a) Upon receipt of the articles and the filings and fees from the incorporators as required by Code Section 7-1-393, the department shall conduct such investigation as it may deem necessary to ascertain whether it should approve the proposed bank or trust company. The department shall approve the bank or trust company if and only if it determines in its discretion that:

(1) The articles and supporting items satisfy the requirements of this chapter;

(2) The convenience and needs of the public will be served by the proposed bank or trust company;

(3) There is a reasonable promise of adequate support for the bank or trust company in the light of:

(A) The competition offered by existing banks and trust companies and other financial institutions;

(B) The previous financial history of the community as to banks, trust companies, and other financial institutions;

(C) As to banks, the opportunities for profitable employment of bank funds as indicated by the average demand for credit, the number of potential depositors, the volume of bank transactions, and the businesses and industries of the community with particular regard to their stability, diversification, and size; and

(D) As to trust companies, the opportunities for profitable employment of fiduciary or other representative services;

(4) The character and fitness of the incorporators, of the directors, and of the proposed officers are such as to command the confidence of the community and to warrant the belief that the business of the proposed bank or trust company will be honestly and efficiently conducted;



(5) There has not been any material violation of Code Section 7-1-391, so that approving the articles would, in the opinion of the department, impair the policy manifested by that provision;

(6) The capital structure of the proposed bank or trust company is adequate in relation to the amount and character of the anticipated business of the bank or trust company and the safety of prospective depositors; and

(7) In the case of trust companies, the proposed company will have sufficient personnel with adequate knowledge and experience to administer fiduciary accounts.

(b) Within 90 days after receipt of the articles and the filings and fees from the incorporators as required by Code Section 7-1-393, the department shall approve or disapprove the proposed bank or trust company. In giving approval, the department may impose conditions to be satisfied prior to the issuance of a permit to do business under Code Section 7-1-396. If the department, in its discretion, shall approve the proposed bank or trust company with or without conditions, it shall deliver its written approval of the articles to the Secretary of State and notify the incorporators of its action, provided that if the approval of a federal public body is also required with respect to the bank or trust company, then the department may, at its option, withhold its written approval from the Secretary of State until such approval is given and may, at its option, withdraw its approval if the federal public body refuses to grant its approval to the bank or trust company. If the department, in its discretion, shall disapprove the proposed bank or trust company, it shall notify the incorporators of its disapproval and state generally the unfavorable factors influencing its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review as provided in Code Section 7-1-90.

(b.1) The procedure and criteria used in the review of a request to establish an additional banking location pursuant to Code Sections 7-1-601 and 7-1-602 may be streamlined and abbreviated as provided by departmental rule, regulation, or written policy.

(c) Nothing contained in this Code section, Code Section 7-1-608, or Code Section 7-1-622 shall limit the authority of the department to approve the organization of a special purpose bank or trust company which does not do a general banking business with the public but is organized for the purpose of conducting a limited banking business which facilitates the economic, commercial, or export-import trade growth of this state. The department may establish, by rule or by condition to its approval of articles of incorporation of any special bank or of any credit card bank incorporated under the provisions of Chapter 5 of this title, such special provisions concerning distribution of ownership, composition of the board of directors, bylaws, or the conduct of corporate affairs for any such special purpose

bank or credit card bank incorporated under the provisions of Chapter 5 of this title as it determines to be consistent with the special nature of such charters and their efficient operation and safe and sound banking practice; provided, however, in no event shall fewer than a majority of the directors of such special purpose bank or credit card bank be residents of this state.

(d) The department shall not approve articles for any trust company that is not also a bank or an affiliated trust company as defined in Code Section 7-1-320.

(e) The department may utilize in its investigation process such reports from other bank supervisory agencies as are pertinent to the requirements of Georgia law. (Ga. L. 1925, p. 119, § 1; Code 1933, § 13-905; Ga. L. 1949, p. 308, § 1; Ga. L. 1951, p. 287, § 1; Ga. L. 1966, p. 692, § 11; Code 1933, § 41A-1805, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1983, p. 602, § 11; Ga. L. 1989, p. 1211, § 7; Ga. L. 1989, p. 1257, § 6; Ga. L. 1990, p. 8, § 7; Ga. L. 1993, p. 511, § 1; Ga. L. 1996, p. 848, § 6; Ga. L. 1998, p. 795, § 16.)

**Cross references.** — Unlawful acquisitions or mergers by bank holding companies, by bank holding companies, § 7-1-608. Provisions applicable to interstate acquisitions § 7-1-622.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 173.

#### 7-1-395. Issuance of certificate of incorporation.

If the Secretary of State shall receive, with respect to the proposed bank or trust company:

(1) The written approval of the department with a copy of the articles of incorporation attached;

(2) An affidavit executed by the duly authorized agent or publisher of the newspaper in which publication of the articles or a summary statement relating thereto is required by Code Sections 7-1-7 and 7-1-392 stating that the articles or the summary statement have been published as required by those Code sections;

(3) All fees and charges required by law and if, in addition, the name of the proposed bank or trust company continues to be reserved or is available,

the Secretary of State shall immediately issue to the incorporators a certificate of incorporation. The Secretary of State shall retain on file in his office a copy of the certificate, the articles, the department's approval, and the publisher's certificate. (Ga. L. 1898, p. 78, § 2; Civil Code 1910, § 2816; Ga. L. 1919, p. 135, art. 8, §§ 6, 7; Code 1933, §§ 13-906, 13-907, 109-102;

Ga. L. 1952, p. 193, § 1; Ga. L. 1966, p. 692, §§ 12, 13; Code 1933, § 41A-1806, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 7.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 173.

#### **7-1-396. Effect of certificate of incorporation; permit to begin business.**

(a) As of the issuance of the certificate of incorporation by the Secretary of State, the corporate existence of the bank or trust company shall begin and those persons who subscribed for shares prior to filing of the articles, or their assignees, shall be shareholders in the bank or trust company; provided, nevertheless, that the department shall have full authority to regulate and supervise the activities of promoters, incorporators, initially named directors, subscribers for shares, and all persons soliciting offers to subscribe for shares in any bank in formation under this chapter even though the corporate existence of the bank may not have officially begun and the bank in formation shall be considered a “bank” for those purposes. Persons named in the articles of incorporation and approved by the department as initial directors of the bank in formation shall not be considered “limited salesmen” or “salesmen” within the meaning of paragraphs (18) and (25), respectively, of subsection (a) of Code Section 10-5-2 but rather shall be considered “executive officers” within the meaning of paragraph (13) of subsection (a) of Code Section 10-5-2.

(b) The certificate of incorporation shall be conclusive evidence of the fact that the bank or trust company has been incorporated; but proceedings may be instituted by the state to dissolve, wind up, and terminate a bank or trust company in accordance with Code Section 7-1-92 and other applicable provisions of this chapter.

(c) Until receipt of a permit to begin business issued by the department, a bank or trust company shall not transact any business except such business as is incident to its organization or to the obtaining of subscriptions and payment for its shares and other securities.

(d) The department shall issue to a bank or trust company a permit to begin business when:

(1) Capital stock of the bank or trust company shall have been fully paid in, in cash, and in no event in an amount less than the minimum capital stock for banks or trust companies under Code Section 7-1-410, and, in addition, there shall have been paid in:

(A) Paid-in capital in an amount not less than 20 percent of the capital stock;

(B) An expense fund in an amount fixed by the department which shall not be less than 5 percent of the capital stock; and



(C) The proceeds of subordinated securities, if any, which were considered part of the capital structure of the bank or trust company by the department under Code Section 7-1-419 in giving its approval of the proposed institution;

(2) All of the directors have taken the oath or affirmation required by Code Section 7-1-484;

(3) The bylaws of the bank or trust company have been filed with the department;

(4) The bank or trust company has designated its registered agent and registered office pursuant to Code Section 7-1-132;

(5) The bank or trust company has been organized and is ready to begin the business for which it was incorporated;

(6) All conditions imposed by the department in giving its approval of the proposed bank or trust company under Code Section 7-1-394 have been satisfied; and

(7) The department has received an affidavit signed by the president or secretary and by at least a majority of the directors of the bank or trust company to the effect that all of the foregoing requirements of this subsection have been satisfied. (Ga. L. 1919, p. 135, art. 8, §§ 7, 8; Code 1933, §§ 13-908, 13-909; Ga. L. 1963, p. 511, §§ 1, 2; Ga. L. 1966, p. 692, §§ 14, 16; Code 1933, § 41A-1807, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 23; Ga. L. 1977, p. 730, § 5; Ga. L. 1987, p. 1586, § 6; Ga. L. 1991, p. 94, § 7; Ga. L. 1998, p. 795, § 17.)

#### **7-1-397. Organizational meetings.**

(a) After the issuance of the certificate of incorporation by the Secretary of State, a first meeting of the shareholders may be held within this state at the call of the shareholders who were the incorporators, or a majority of them, for the purpose of adopting bylaws or for such other purposes as shall be stated in the notice of the meeting.

(b) After the issuance of the certificate of incorporation by the Secretary of State, an organizational meeting of the board of directors named in the articles shall be held within this state at the call of a majority of the directors for the purpose of adopting bylaws and of electing officers and for transaction of such other business as may come before the meeting. The directors who call the meeting shall give to each director named in the articles at least three days' written notice of the meeting. (Code 1933, § 41A-1808, enacted by Ga. L. 1974, p. 705, § 1.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 18A Am. Jur. 2d, Corporations, §§ 219-221.

**7-1-398. Liability for premature business.**

Incorporators and other persons who organize a bank or trust company which transacts business before its capital stock, paid-in capital, and expense fund as required by Code Section 7-1-396 have been paid in shall be jointly and severally liable to depositors and other creditors to make good the amounts not paid in by subscribers or otherwise deficient. Such liability shall be deemed as an asset of the bank or trust company and may be enforced by it, its successors or assignees, or by a shareholder suing derivatively, or by a receiver appointed under this chapter. (Ga. L. 1919, p. 135, art. 18, § 6; Code 1933, § 13-1906; Code 1933, § 41A-1809, enacted by Ga. L. 1974, p. 705, § 1.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d, Corporations, §§ 131, 132, 135.

**C.J.S.** — 18 C.J.S., Corporations, §§ 62-66, 555, 556, 624.

**ALR.** — False representation by officers or directors of bank or building and loan association that impairment of capital has been

made good, as basis of action against them, 144 ALR 1498.

Validity, construction, and effect of statutory provisions concerning capital requisites of state incorporation of bank, 79 ALR3d 1190.

PART 9

FINANCIAL STRUCTURE

**Cross references.** — Applicability of security-registration requirements to securi-

ties issued by or guaranteed by banks or trust companies, § 10-5-8.

OPINIONS OF THE ATTORNEY GENERAL

**Charter may not be amended to provide authorized but unissued shares.** — A regulated certificated bank is not authorized by

law to amend its charter to provide for authorized but unissued shares of common stock. 1974 Op. Att'y Gen. No. 74-149.

**7-1-410. Minimum capital stock.**

(a) Except as provided in subsections (b) and (c) of this Code section, the minimum capital stock of a de novo bank or trust company shall be \$3 million. An established bank or trust company no longer in de novo status shall maintain a minimum capital stock of \$3 million or such greater amount as the department may require based on a proportion of capital to total assets.

(b) A de novo bank or trust company whose main office is located in a county with a population of less than 200,000, according to the last official United States census, shall have a minimum capital stock of \$2 million. An established bank or trust company located in such county shall maintain a minimum capital stock of \$2 million or such greater amount as the department may require based on a proportion of capital to total assets.

(c) A bank or trust company existing on July 1, 1989, with a capital stock of less than that required by subsections (a) and (b) of this Code section shall not be required to increase its capital stock above the amount outstanding on July 1, 1989, except as otherwise provided by law. (Ga. L. 1898, p. 78, § 1; Civil Code 1910, § 2815; Ga. L. 1919, p. 135, art. 8, § 1; Ga. L. 1920, p. 102, § 1; Ga. L. 1927, p. 195, § 7; Ga. L. 1931, p. 156, § 1; Code 1933, §§ 13-901, 109-101; Ga. L. 1935, p. 101, § 1; Ga. L. 1941, p. 312, § 1; Ga. L. 1943, p. 249, § 1; Ga. L. 1965, p. 501, § 1; Ga. L. 1966, p. 463, § 1; Ga. L. 1966, p. 692, § 7; Ga. L. 1972, p. 384, § 1; Ga. L. 1972, p. 727, § 1; Code 1933, § 41A-1901, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1211, § 8; Ga. L. 1998, p. 795, § 18; Ga. L. 2003, p. 843, § 5.)

**The 2003 amendment**, effective July 1, 2003, added the second sentences in subsections (a) and (b).

RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 286, 288.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 48.

**ALR.** — Validity, construction, and effect of statutory provisions concerning capital requisites of state incorporation of bank, 79 ALR3d 1190.

7-1411. Paid-in capital and appropriated retained earnings.

Losses sustained by a bank or trust company in excess of retained earnings may be charged to paid-in capital or to appropriated retained earnings, provided that a bank or trust company shall not pay any dividends so long as its paid-in capital and appropriated retained earnings do not, in combination, equal at least 20 percent of its capital stock. Earnings shall, not later than the end of each fiscal year, be transferred to appropriated retained earnings until such required 20 percent margin is obtained. (Code 1933, § 41A-1902, enacted by Ga. L. 1974, p. 705, § 1.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 296.

**ALR.** — Validity, construction, and effect

of statutory provisions concerning capital requisites of state incorporation of bank, 79 ALR3d 1190.



**7-1-412. Beginning business expense fund.**

The expense fund required under Code Section 7-1-396 shall be created out of amounts paid for shares of common stock which are in excess of 120 percent of the par value of such shares. Such expense fund may be charged for expenses incurred by the bank or trust company in connection with its incorporation and operation, and any balance in such fund at any time after the expiration of one year from the issuance of a permit to begin business may be credited to paid-in capital. (Code 1933, § 41A-1903, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-413. Classes of shares.**

A bank or trust company may have one or more classes of common or preferred shares, all of which shall be shares with par value of not less than \$1.00 and any or all of which may, subject to the restrictions of this chapter, consist of shares with full, limited, multiple, fractional, or no voting rights and such designations, preferences, qualifications, privileges, limitations, redemption provisions (in the case of preferred shares), options, conversion rights, and other special rights as shall be stated in the articles. Except as otherwise stated in the articles, this chapter, or other applicable laws, each share shall be equal in all respects to every other share. (Ga. L. 1919, p. 135, art. 8, § 1; Ga. L. 1920, p. 102, § 1; Ga. L. 1927, p. 195, § 7; Ga. L. 1931, p. 156, § 1; Code 1933, § 13-901; Ga. L. 1935, p. 101, § 1; Ga. L. 1941, p. 312, § 1; Ga. L. 1943, p. 249, § 1; Ga. L. 1965, p. 501, § 1; Code 1933, § 13-912, enacted by Ga. L. 1966, p. 590, § 3; Ga. L. 1966, p. 692, § 7; Ga. L. 1968, p. 1045, § 1; Ga. L. 1969, p. 958, § 1; Ga. L. 1972, p. 727, § 1; Code 1933, § 41A-1904, enacted by Ga. L. 1974, p. 705, § 1.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 286, 288.

**C.J.S.** — 18 C.J.S., Corporations, §§ 148-162.

**7-1-414. Purchase, redemption, and convertibility of shares and debt securities.**

(a) Any preferred shares subject to redemption shall be redeemable only pro rata or by lot or by such other equitable method as is selected by the board of directors, except as otherwise provided in the articles.

(b) With the written approval of the department and the votes of directors and shareholders required to authorize an increase in the capital stock of the institution under Code Section 7-1-511:

- (1) Preferred stock may be convertible to common stock; and
- (2) Subordinated securities may be convertible to common stock.

(c) With the written approval of the department, a resolution of the board of directors, and a two-thirds' affirmative vote of the shares entitled to vote, a bank or trust company may acquire issued shares of its own common stock, which will then be considered treasury shares. The department shall consider whether the acquisition has a legitimate corporate purpose, whether any capital impairment would result, and whether the price of the shares reflects fair market value. (Code 1933, § 13-912, enacted by Ga. L. 1966, p. 590, § 3; Ga. L. 1968, p. 1045, § 1; Ga. L. 1969, p. 958, § 1; Code 1933, § 41A-1905, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1999, p. 674, § 8.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d, Corporations, §§ 217, 282.

**C.J.S.** — 18 C.J.S., Corporations, §§ 180-183.

#### 7-1-415. Consideration for shares.

(a) Except as provided in subsection (b) of this Code section and in the case of a distribution of shares under subsection (e) of Code Section 7-1-488 or incident to a merger, consolidation, or other corporate reorganization or rehabilitation authorized by this chapter, shares of a bank or trust company may be issued only for cash in an amount which shall be at least the aggregate par value of the share plus such amounts, if any, necessary to assure that after issuance of the shares the bank or trust company will have the paid-in capital required by Code Section 7-1-411 and, in the case of a new bank or trust company, the expense fund required by Code Section 7-1-396.

(b) Where a bank or trust company issues shares in exchange for or in order to convert other shares or obligations which have been issued by it, the consideration for such shares shall be:

- (1) The cash originally received for the shares or obligations surrendered or converted;
- (2) The additional cash received incident to the exchange or conversion;
- (3) The other amounts, if any, transferred to capital stock incident to the exchange or conversion.

In any such case the consideration shall be not less than the minimum amount specified in subsection (a) of this Code section. Any amount by which capital stock may be reduced upon an exchange or conversion shall be transferred to paid-in capital. (Ga. L. 1898, p. 78, § 1; Civil Code 1910, § 2815; Ga. L. 1919, p. 135, art. 8, § 7; Code 1933, §§ 13-908, 109-101; Ga. L. 1963, p. 511, § 1; Code 1933, § 13-912, enacted by Ga. L. 1966, p. 590, § 3; Ga. L. 1966, p. 692, § 14; Ga. L. 1968, p. 1045, § 1; Ga. L. 1969, p. 958,

§ 1; Ga. L. 1972, p. 384, § 1; Code 1933, § 41A-1906, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18A Am. Jur. 2d, Corporations, §§ 494, 495.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 54.

#### 7-1-416. Method of issuance.

(a) Unless more restrictive procedures are stated in the articles, the board of directors may, by resolution duly adopted, issue from time to time, in whole or in part, common or preferred shares authorized by the articles.

(b) With the consent of the department, a bank or trust company may withdraw any offer to sell its common or preferred shares, whether issued pursuant to its articles or pursuant to subsection (a) of this Code section; and such shares may be held as authorized shares subject to future issuance in accordance with subsection (a) of this Code section.

(c) A bank or trust company may not, directly or indirectly, extend credit for the purpose of financing the original purchase of capital stock or capital debt issued by it or by a bank holding company to which it is affiliated. (Code 1933, § 13-912, enacted by Ga. L. 1966, p. 590, § 3; Ga. L. 1968, p. 1045, § 1; Ga. L. 1969, p. 958, § 1; Code 1933, § 41A-1907, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 11; Ga. L. 1995, p. 673, § 16.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d, Corporations, § 19. 18A Am. Jur. 2d, Corporations, §§ 484, 485.

**C.J.S.** — 18 C.J.S., Corporations, §§ 129-143.

#### 7-1-417. Share certificates and debt security instruments.

(a) A bank or trust company shall not deliver any share certificate until the share or shares represented thereby are fully paid. Each subscriber, upon payment in full for his shares, shall be entitled to a certificate or certificates certifying the number of shares owned by him in the bank or trust company.

(b) Unless otherwise provided in the articles or the bylaws, the shares of a bank or trust company shall be represented by certificates signed by the president or a vice-president and the secretary or an assistant secretary of the bank or trust company and may be sealed with the seal of the bank or trust company or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the bank or trust company itself or any employee of the bank or trust company.



(c) Each certificate representing shares shall set forth upon the face thereof:

- (1) The name of the bank or trust company;
- (2) That the bank or trust company is organized under the laws of this state;
- (3) The name or names of the person or persons to whom issued;
- (4) The number and class of shares such certificate represents;
- (5) The par value of each share represented by such certificate;
- (6) If the shares represented thereby are nonvoting shares, a statement or notation to that effect; and
- (7) If the shares represented thereby are subordinate to shares of any other class with respect to dividends or amounts payable on liquidation, a brief statement to that effect.

(d) Each certificate representing shares issued by a bank or trust company which is authorized to issue shares of more than one class shall set forth or fairly summarize upon the face or back of the certificate, or shall state that the bank or trust company will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued.

(e) In the event of a change in the capital structure of a corporation, it shall not be necessary to recall any previously issued share certificate for either the addition or deletion of the statement required by paragraph (7) of subsection (c) of this Code section to be set forth upon the face of such certificate or for revision of the information placed upon the face or back of the certificate pursuant to subsection (d) of this Code section.

(f) The signatures of the officers of a bank or trust company and the seal of the bank or trust company upon any bond, debenture, or other debt security issued by the bank or trust company may be facsimiles if the instrument is authenticated or countersigned by a trustee or transfer agent, or registered by a registrar, other than the bank or trust company itself or any employee of the bank or trust company.

(g) In case any officer who has signed or whose facsimile signature has been placed upon a share certificate or upon a bond, debenture, or other debt security as provided in this Code section shall have ceased for any reason to be such officer before such certificate or instrument is issued, it may be issued by the bank or trust company with the same effect as if he were such officer at the date of its issue.

(h) Nothing in this Code section shall be construed to invalidate any share certificate validly issued and outstanding on April 1, 1975. (Code

1933, § 41A-1908, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1982, p. 3, § 7.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 303.      **C.J.S.** — 9 C.J.S., Banks and Banking, § 55.

#### 7-1418. Issuance and transfer of fractional shares or scrip.

(a) A bank or trust company may, but shall not be obliged to, issue certificates for fractional shares in order to effect share transfers, share distributions or reclassifications, mergers, consolidations, or reorganizations which shall entitle the holder, in proportion to his fractional holdings, to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the bank or trust company in the event of liquidation.

(b) As an alternative, a bank or trust company may pay in cash the fair value of fractional shares as determined by the board of directors as of a time fixed by the board. In the absence of bad faith, all acts of the board pursuant to this subsection shall be conclusive.

(c) As an alternative, the board of directors may issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the bank or trust company or of its agent, exchangeable as therein provided for full shares; but such scrip shall not entitle the holder to any rights of a shareholder except as therein provided. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which such scrip is exchangeable may be sold by the bank or trust company and the proceeds thereof distributed to the holders of such scrip, or subject to any other conditions which the board of directors may deem advisable. If a bank or trust company issues scrip, it shall provide reasonable opportunity for persons entitled thereto to sell such scrip or to purchase such additional scrip as may be needed to acquire a full share.

(d) A corporation may provide reasonable opportunity for persons entitled to fractional shares to sell such fractional shares or to purchase such additional fractional shares as may be needed to acquire a full share, or may sell fractional shares or scrip for the account of such persons. (Code 1933, § 41A-1909, enacted by Ga. L. 1974, p. 705, § 1.)

#### 7-1419. Subordinated securities.

(a) A bank or trust company may issue notes, debentures, or other obligations in the form of "subordinated securities," provided that they:

(1) Are subordinated in right of payment, in the event of insolvency or liquidation of the bank or trust company, to the prior payment of all

deposits of the bank or trust company and of all claims of other creditors of the bank or trust company except the holders of securities on a parity therewith and the holders of securities expressly subordinated thereto;

(2) Are authorized by the same votes of directors and shareholders as those required for authorization of an increase in capital stock of the bank or trust company under Code Section 7-1-511;

(3) Contain provisions for amortization, serial maturities, transfers to a sinking fund, allocation of reserves, or other provisions sufficient to pay or to have paid at maturity all amounts due thereon; and

(4) Are approved by the department prior to the issue thereof.

(b) The aggregate amount of the obligations of a bank or trust company in the form of subordinated securities shall at no time exceed 50 percent of the sum of the unimpaired capital stock, unimpaired paid-in capital, and appropriated retained earnings of the bank or the trust company.

(c) If at or after the payment or retirement of the subordinated securities of a bank or trust company there is or would be a deficiency in the capital stock of the bank or trust company, such fact shall be reported to the department in advance of the payment or retirement. The department may, upon receipt of such report, order a restoration of capital stock or take other appropriate remedial measures under this chapter.

(d) Subordinated securities shall not be considered in determining the amount of ad valorem taxes payable by the bank or trust company. (Code 1933, § 13-2025.1, enacted by Ga. L. 1965, p. 494, § 1; Ga. L. 1968, p. 1045, §§ 6, 7; Code 1933, § 41A-1910, enacted by Ga. L. 1974, p. 705, § 1.)

**Cross references.** — Order of payment of liabilities of financial institution which is liquidated or dissolved and whose assets are insufficient to pay in full all liabilities, § 7-1-202.

**Administrative rules and regulations.** — Borrowed money, Official Compilation of Rules and Regulations of State of Georgia, Department of Banking and Finance, Banks, Chapter 80-1-9.

## JUDICIAL DECISIONS

**Cited in Georgia R.R. Bank & Trust Co. v. FDIC**, 758 F.2d 1548 (11th Cir. 1985).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 501.

**ALR.** — Trust or preference in assets of insolvent bank in respect of funds intended to aid bank in financial difficulty, 88 ALR 996.

Trust or preference in respect of funds

deposited by executors, administrators, testamentary trustees, or guardians, 101 ALR 602.

Rights and preferences in respect of assets of insolvent bank as affected by its division into departments, 114 ALR 680.



## PART 10

## SHAREHOLDERS

## RESEARCH REFERENCES

**ALR.** — Duty and liability of bank under agreement to remit money, 69 ALR 673.

**7-1-430. Liability of subscribers and shareholders.**

(a) Except as otherwise provided in this Code section, a holder of or subscriber to shares of a bank or trust company shall be under no obligation to the bank or trust company or its creditors with respect to such shares or subscription other than the obligation to pay the full consideration remaining due to the company upon such shares or subscription. Such obligation may be enforced by the bank or trust company and its successors or assigns, or by a shareholder suing derivatively, or by a receiver appointed under this chapter.

(b) Every subscriber for shares not fully paid and every original holder of shares not fully paid which were issued contrary to Code Section 7-1-417 and every transferee or assignee of a subscription for shares or of shares with knowledge or notice that the shares are not fully paid and were issued contrary to Code Section 7-1-417 shall continue personally liable thereon as provided in subsection (a) of this Code section, notwithstanding any transfer or assignment of such shares or subscription for such shares.

(c) Any person becoming a transferee or assignee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable thereon for any unpaid portion of such consideration.

(d) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, receiver, or other fiduciary shall not be personally liable to the bank or trust company or its creditors as a holder of or subscriber for its shares; but the estate and funds in his hands or under his control shall be so liable. Nothing in the foregoing shall relieve any fiduciary from liability for a breach of trust.

(e) No bailee or nominee and no pledgee or other holder of shares as collateral security shall be personally liable as a shareholder, but the bailor or real party in interest or pledgor or other person transferring such shares as collateral shall be considered the holder thereof for purposes of liability under this Code section.

(f) No liability under this Code section shall be asserted against a subscriber or shareholder more than six years after the date on which the shares for which payment is sought were to have been fully paid pursuant to

the contract of sale or subscription agreement or, if no such date is provided for in the contract of sale or subscription agreement, more than six years from the date of the contract of sale or subscription agreement, whether or not such contract or agreement is under seal.

(g) The subscription agreement or contract of sale may prescribe other penalties for failure to make payments when due; but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of 20 days after written demand has been made therefor. The delinquent subscriber or his legal representative shall be entitled to be paid the excess of the sale proceeds realized from the sale by the bank or trust company of such subscribed shares over the sum of:

(1) The amount due and unpaid on the subscription; and

(2) The reasonable expenses incurred in selling the shares;

but in no event shall the delinquent subscriber or his legal representative be entitled to be paid an amount greater than the amount paid by said subscriber on his subscription.

(h) The board of directors shall have power to compromise, on such terms and conditions as the board may prescribe, any claim, dispute, or action arising out of a subscription for shares when in the judgment of the board it is in the best interests of the bank or trust company to do so. (Ga. L. 1919, p. 135, art. 18, §§ 1, 4; Ga. L. 1925, p. 119, § 1; Code 1933, §§ 13-1901, 13-1904; Ga. L. 1935, p. 103, § 1; Ga. L. 1937, p. 429, § 1; Code 1933, § 41A-2001, enacted by Ga. L. 1974, p. 705, § 1.)

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity in the provisions, decisions under Ga. L. 1919, p. 135, art. 18, § 2, and former Code 1933, § 13-1902 have been included in the annotations for this Code section.

**Trustees are exempt personally from liabilities as stockholders;** but the estates and funds in their hands are made liable in like

manner and to same extent as persons interested in such trust funds would be if the stock stood in their own name. *State Banking Co. v. Hinton*, 178 Ga. 68, 172 S.E. 42 (1933) (decided under Ga. L. 1919, p. 135, art. 18, § 2); *Griffin v. Securities Inv. Co.*, 53 Ga. App. 396, 186 S.E. 232 (1936) (decided under former Code 1933, § 13-1902).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18A Am. Jur. 2d., Corporations, § 850 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 69, 75, 79, 86-90.

**ALR.** — Payments by stockholders applicable upon double liability, 56 ALR 527; 83 ALR 147; 120 ALR 511.

Statutory added liability of holders of bank stock or other corporate stock the issue

of which was ultra vires, invalid, or irregular, 86 ALR 816.

Conclusiveness of assessment of statutory liability of stockholders of national banks, 90 ALR 1063.

Statutory liability of stockholder of bank or other corporation as affected by change in or renewal of corporation's obligation, 97 ALR 630.

Liability on stock held by one as trustee or in other fiduciary capacity, 97 ALR 1250; 117 ALR 655.

Liability on stock held by one as trustee or in other fiduciary capacity, 117 ALR 655.

State laws regarding superadded liability of stockholders in state banks as affected by federal legislation, 169 ALR 942.

### **7-1431. Preemptive rights.**

(a) Except as provided in subsection (b) of this Code section or in the articles, a bank or trust company shall issue shares, option rights, or securities having conversion or option rights by first offering them to shareholders of the same class in proportion to their holdings of shares of such class.

(b) Except as provided in the articles, there shall be no preemptive right to:

(1) Shares issued as a share dividend;

(2) Fractional shares;

(3) Shares issued pursuant to share plans authorized by subsection (e) of Code Section 7-1-488;

(4) Shares issued pursuant to acquisition of substantially all of the assets of another bank or trust company;

(5) Shares released by waiver from their preemptive right by the affirmative vote or written consent of the holders of two-thirds of the shares of the class to be issued. Any such vote or consent shall be binding on all shareholders and their transferees for the time specified in such vote or consent up to but not exceeding one year from the date thereof and shall protect the bank or trust company, its management, and all persons who may within such time acquire the shares so released;

(6) Shares which have been offered to shareholders to satisfy their preemptive right but not purchased by them within the prescribed time and which are thereafter issued or sold to any other person or persons at a price not less than the price at which they were offered to such shareholders.

(c) Unless otherwise provided in the articles, no holder of shares of any class shall have any preemptive right with respect to shares of any other class which may be issued or sold by the bank or trust company.

(d) Nothing in this Code section shall impair any cause of action or remedy which any shareholder may have for a breach of duty by the board of directors relating to the sale or other disposition by the bank or trust company of shares or securities not subject to the preemptive rights under this Code section or under the articles.

(e) The holders of shares entitled to the preemptive rights shall be given prompt notice setting forth the time within which and the terms and



conditions upon which such shareholders may exercise their preemptive rights. Such notice shall be given at least 30 days prior to the expiration of the period during which the rights may be exercised. (Ga. L. 1919, p. 135, art. 9, § 9; Ga. L. 1920, p. 102, § 1; Code 1933, § 13-1009; Ga. L. 1965, p. 496, § 1; Ga. L. 1966, p. 590, § 5; Ga. L. 1968, p. 1045, § 5; Code 1933, § 41A-2002, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18A Am. Jur. 2d, Corporations, §§ 525-540.

**C.J.S.** — 18 C.J.S., Corporations, §§ 132-139.

**ALR.** — Character of banks or banking companies within constitutional or statutory provision imposing additional liability on stockholders, 82 ALR 1356.

#### 7-1-432. Meetings of shareholders.

(a) Meetings of the shareholders of a bank or trust company shall be held at such place within or without the state as shall be fixed by the bylaws or by the board of directors pursuant to the bylaws or, if not so fixed, at the main office of the bank or trust company.

(b) There shall be at least one meeting of the shareholders in each calendar year for the election of directors. In addition, any matter relating to the bank or trust company, whether or not stated in the notice of meeting, may be brought up for action, except matters which this chapter requires to be stated in the notice of meeting. The time of such annual meeting shall be fixed by the bylaws or by the board of directors pursuant to the bylaws. If the annual meeting shall not be called and held during any calendar year, the principal court may, after notice to the bank or trust company, order a substitute annual meeting to be held upon the application of any shareholder. The principal court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of such meeting, the record date for determination of shareholders entitled to vote, and the form of notice of such meeting.

(c) Special meetings of the shareholders or a special meeting in lieu of the annual meeting of the shareholders may be called by the president, the chairman of the board of directors, the board of directors, or such other officers or persons as may be provided in the articles or bylaws or, in the event there are no officers or directors, then by any shareholder. Special meetings of the shareholders or a special meeting in lieu of the annual meeting of the shareholders shall be called by the bank or trust company upon the written request of the holders of not less than 25 percent of the outstanding shares of the bank or trust company entitled to vote in an election of directors.

(d) Notice of annual and special meetings shall be given to shareholders of record pursuant to Code Section 7-1-6. But when a meeting is adjourned

to another time or place, it shall not be necessary, unless the bylaws require otherwise, to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken; and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. If, however, after the adjournment the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given each shareholder of record on the new record date entitled to vote at such meeting.

(e) Any action required by this chapter to be taken at a meeting of the shareholders of a bank or trust company, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if written consent setting forth the action so taken shall be signed by all the shareholders entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of shareholders and may be stated as such in any articles or document filed with the Secretary of State or the department under this chapter. (Ga. L. 1898, p. 78, § 6; Civil Code 1910, § 2818; Ga. L. 1917, p. 62, § 1; Ga. L. 1919, p. 191, art. 19, § 1; Code 1933, §§ 13-2001, 109-103; Ga. L. 1947, p. 476, § 1; Ga. L. 1947, p. 480, § 1; Ga. L. 1966, p. 590, § 6; Code 1933, § 41A-2003, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1998, p. 795, § 19.)

#### RESEARCH REFERENCES

<b>Am. Jur. 2d.</b> — 18A Am. Jur. 2d, Corporations, §§ 948-978. 18B Am. Jur. 2d, Corporations, §§ 1366-1369, 1436.	<b>C.J.S.</b> — 18 C.J.S., Corporations, §§ 362-396.
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#### 7-1433. Closing of transfer books or fixing record date.

(a) For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a bank or trust company may provide that the stock transfer books shall be closed for a stated period not to exceed, in any case, 50 days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting.

(b) In lieu of closing the stock transfer books, the bylaws or, in the absence of an applicable bylaw, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than 50 days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the

particular action requiring such determination of shareholders is to be taken.

(c) If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed, or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of stockholders.

(d) When a determination of shareholders entitled to vote at any meeting of shareholders has been made, as provided in this Code section, such determination shall apply to any adjournment thereof, unless the board of directors fixes a new record date under this Code section for the adjourned meeting. (Code 1933, § 41A-2004, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18A Am. Jur. 2d, Corporations, §§ 965, 966.

**C.J.S.** — 18 C.J.S., Corporations, §§ 375-394.

#### 7-1-434. Voting list.

(a) The officer or agent having charge of the stock transfer books for shares of a bank or trust company shall make a complete list of the shareholders entitled to vote at a meeting of shareholders or any adjournment thereof, arranged in alphabetical order, showing the address of each shareholder and the number and class, if any, of shares held by each shareholder. Such list shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof. Such list shall be prima-facie evidence of who is a shareholder of record; but, in the event of challenge, the record of shareholders required by Code Section 7-1-439 shall control.

(b) If the requirements of this Code section have not been substantially complied with, the meeting shall, on the demand of any shareholder in person or by proxy, be adjourned until the requirements are complied with.

(c) If no such demand is made, failure to comply with the requirements of this Code section shall not affect the validity of any action taken at such meeting.

(d) Notwithstanding subsections (a) through (c) of this Code section, it shall not be necessary to prepare or produce a list of shareholders in any case where the record of shareholders is presented and readily shows, in alphabetical order or by alphabetical index and by classes, if any, the names



of the shareholders entitled to vote, with the address of and the number of shares held by each. (Code 1933, § 41A-2005, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1977, p. 730, § 6.)

#### 7-1435. Quorum of shareholders.

(a) Except as provided in subsection (d) of this Code section or the articles or in bylaws adopted by the shareholders, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders.

(b) If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number, or voting by classes, is required by this chapter, or the articles, or bylaws.

(c) When a quorum is once present to organize a meeting, the shareholders present may continue to do business at the meeting or at any adjournment thereof, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(d) If a meeting cannot be organized for lack of a quorum, those present may adjourn the meeting to such time and place as they may determine. In the case of a meeting for the election of directors which is twice adjourned for lack of a quorum, those present at the second of such adjourned meetings, of which notice has been given in writing to shareholders pursuant to Code Section 7-1-6, shall constitute a quorum for the election of directors without regard to the other quorum requirements of this Code section, the articles, or bylaws. (Code 1933, § 41A-2006, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18A Am. Jur. 2d, Corporations, §§ 993-998. 18B Am. Jur. 2d, Corporations, § 1372. **C.J.S.** — 18 C.J.S., Corporations, §§ 369-374.

#### 7-1436. Voting of shares.

(a) Unless otherwise provided in the articles, each outstanding share entitled to vote, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders. A subscriber shall not be entitled to vote the share subscribed for until such shares have been fully paid.

(b) Treasury shares shall not be voted at any meeting nor counted in determining the total number of outstanding shares at any given time.

(c) The chairman of the board, president, any vice-president, the secretary, or the treasurer of a corporation which is the holder of record of

shares of a bank or trust company shall be deemed by the bank or trust company to have authority to vote such shares and to execute proxies and written waivers and consents in relation thereto, whether such shares are held in a fiduciary capacity or otherwise, unless, before a vote is taken or a waiver of consent is acted upon, it is made to appear by a certified copy of the bylaws or resolution of the board of directors or executive committee of the corporation holding such shares that such authority does not exist or is vested in some other officer or person. In the absence of such certification, a person executing any such proxies, waivers, or consents or presenting himself at a meeting as one of such officers of a corporate shareholder shall, for the purposes of this Code section, be prima facie deemed to be duly elected, qualified, and acting as such officer and to be fully authorized; and, in the case of conflicting representation, the corporate shareholder shall be deemed to be represented by its senior officer in the order first stated in this subsection.

(d) Shares held by an administrator, executor, guardian, or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy; but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name or the name of his nominee. Shares standing in the name of a person as life tenant may be voted by him, either in person or by proxy, unless the record of shareholders shows that he is not entitled to vote such shares.

(e) Shares standing in the name of a receiver may be voted by such receiver; and shares held by or under the control of a receiver may be voted by such receiver without a transfer thereof into his name if authority to do so is contained in an order of the court by which such receiver was appointed.

(f) If a share or shares stand of record in the names of two or more persons, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or otherwise, or if two or more persons have the same fiduciary relationship respecting the same share or shares, then unless the instrument or order appointing them or creating the tenancy otherwise directs and such instrument or order or a copy thereof is filed with the secretary of the bank or trust company, their acts with respect to voting shall have the following effect:

(1) If only one votes, in person or by proxy, his act binds all;

(2) If more than one votes, in person or by proxy, the act of the majority so voting binds all;

(3) If more than one votes in person or by proxy but the votes are evenly split on any particular matter, each faction is entitled to vote the share or shares in question proportionally;

(4) If the instrument or order so filed shows that any such tenancy is held in unequal interest, a majority or even-split for purposes of this subsection shall be a majority or even-split in interest;

(5) The principles of this subsection shall apply, insofar as possible, to execution of proxies, waivers, consents, or objections and for the purpose of ascertaining the presence of a quorum.

(g) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, or a nominee of the pledgee; and thereafter the pledgee or his nominee shall be entitled to vote the shares so transferred.

(h) Notwithstanding subsections (a) through (g) of this Code section, a corporation shall be protected in treating the persons in whose names shares stand on the record of shareholders as the owners thereof for all purposes.

(i) When notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been set aside to pay the redemption price to shareholders, such shares shall not be entitled to vote in any manner and shall not be deemed to be outstanding shares. (Code 1933, § 41A-2007, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18A Am. Jur. 2d, Corporations, §§ 1019, 1020, 1039-1041, 1046, 1047, 1050, 1063-1068.

**C.J.S.** — 18 C.J.S., Corporations, §§ 375-394.

**ALR.** — Voting power of corporation stock as confined to issued and outstanding stock to exclusion of authorized unissued stock or stock which has been reacquired by the corporation, 90 ALR 315.

#### 7-1-437. Proxies.

(a) Unless otherwise unlawful, a person or corporation who is entitled to attend a shareholders' meeting, to vote thereat, or to execute consents, waivers, or releases may be represented at such meeting or vote thereat, and execute consents, waivers, and releases, and exercise any of his other rights, by one or more agents, who may be either an individual or individuals or any domestic or foreign corporation, authorized by a written proxy executed by such person or by his attorney in fact.

(b) No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it, except as otherwise provided in this Code section.

(c) Subject to the limitation of subsection (b) of this Code section, any proxy duly executed is not revoked and continues in full force and effect until an instrument revoking it, or a duly executed proxy bearing a later



date, is received by the secretary of the bank or trust company. A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of such death or incapacity is received by the secretary of the bank or trust company. Notwithstanding that a valid proxy is outstanding, the powers of the proxyholder are suspended, except in the case of a valid proxy which is by law irrevocable and which states on its face that it is irrevocable, if the maker is present at the meeting and elects to vote in person.

(d) If a proxy for the same shares confers authority upon two or more persons and does not otherwise provide, a majority of them present at the meeting or, if only one is present, then that one may exercise all the powers conferred by the proxy; but, if the proxyholders present at the meeting are divided as to the right and manner of voting in any particular case and there is no majority, the voting of said shares shall be prorated.

(e) If a proxy expressly provides, any proxyholder may, unless otherwise unlawful, appoint in writing a substitute to act in his place.

(f) A shareholder shall not sell his vote or issue a proxy to vote to any person for any sum of money or anything of value, except as permitted in this Code section and in Code Section 7-1-438, relating to shareholders' agreements.

(g) To be irrevocable, a proxy must be entitled "IRREVOCABLE PROXY," must state that it is irrevocable, must not otherwise be unlawful, and must be held by any of the following or by a nominee of any of the following:

(1) A pledge or other person holding a security interest in the shares;

(2) A person who has purchased or agreed to purchase the shares;

(3) A creditor or creditors of the bank or trust company who extend or continue credit to the bank or trust company in consideration of the proxy, if the proxy states that it was given in consideration of such extension or continuation of credit, the amounts thereof, and the name of the person extending or continuing credit;

(4) A person who has contracted to perform services as an officer of the bank or trust company, if a proxy is required by the contract of employment and if the proxy states that it was given in consideration of such contract of employment, the name of the employee, and the period of employment contracted for;

(5) A person designated by or under an agreement under Code Section 7-1-438, relating to shareholders' agreements.

(h) Notwithstanding a provision in a proxy stating that it is irrevocable, the proxy becomes revocable after the pledge or security interest is redeemed, or the debt of the bank or trust company is paid, or the period

of employment provided for in the contract of employment has terminated, or the agreement under Code Section 7-1-438, relating to shareholders' agreements, has terminated; and, in a case provided for in paragraph (3) or (4) of subsection (g) of this Code section, a proxy becomes revocable three years after the date of the proxy or at the end of the period, if any, specified therein, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this Code section. This subsection does not affect the duration of a proxy under subsection (b) of this Code section.

(i) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability are noted conspicuously on the face or back of the certificate representing such shares. (Code 1933, § 41A-2008, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 24.)

RESEARCH REFERENCES

<b>Am. Jur. 2d.</b> — 18A Am. Jur. 2d, Corporations, §§ 1069-1095.	<b>C.J.S.</b> — 18 C.J.S., Corporations, §§ 385-394.
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**7-1-438. Shareholders' agreements.**

(a) Unless otherwise unlawful, an agreement between two or more shareholders, if in writing and signed by the parties thereto and if a copy thereof is delivered to the department and approved by the department when, in its discretion, such agreement is in the best interest of the bank and the public, may provide that in exercising any voting rights the shares held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them. Nothing herein shall impair the right of the bank or trust company to treat the shareholders of record as entitled to vote the shares standing in their names.

(b) The duration of any agreement permitted by subsection (a) of this Code section shall not exceed 20 years. Failure to state a period of duration or stating a period of duration in excess of 20 years shall not invalidate the agreement, but in either such case the period of duration of the agreement shall be 20 years. Any such agreement shall be renewable at any time before the expiration of such 20 year period by agreement of all the shareholders bound thereby at the date of renewal.

(c) A transferee of shares in a bank or trust company whose shareholders have entered into an agreement authorized by subsection (a) of this Code section shall be bound by such agreement or any renewal of such agreement authorized by subsection (b) of this Code section if he takes the shares with notice thereof. A transferee shall be deemed to have notice of any such

agreement or any renewal if the existence thereof is noted on the face or back of the certificate or certificates representing such shares. (Code 1933, § 41A-2009, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 25.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d, Corporations, § 24. 18A Am. Jur. 2d, Corporations, §§ 1112-1123.

**C.J.S.** — 18 C.J.S., Corporations, § 379.

#### 7-1-439. Books and records.

(a) Each bank and trust company shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders, board of directors, and committees of directors; and each bank and trust company shall keep at its registered office or main office or at the office of its transfer agent or registrar a record of its shareholders, giving the names and addresses of all shareholders and the number, class, and series, if any, of the shares held by each.

(b) The department may, by regulation, prescribe the minimum disclosure of corporate records and reports which must be made by the bank or trust company to its shareholders at each annual meeting. In issuing such regulations, the department shall consider the legitimate rights of a shareholder to sufficient information to evaluate the management and use of his investment and to elect qualified directors for the bank or trust company as well as the rights of customers of the bank or trust company to maintain the confidentiality of their business affairs.

(c) Nothing in this Code section shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record and irrespective of the number of shares held by him, to compel the production or examination by such shareholder of the books and records of account, minutes, and record of shareholders of a bank or trust company. (Ga. L. 1919, p. 135, art. 19, § 4; Code 1933, § 13-2004; Code 1933, § 41A-2010, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 26; Ga. L. 1998, p. 795, § 20; Ga. L. 2004, p. 631, § 7.)

**The 2004 amendment**, effective May 13, 2004, part of an Act to revise, modernize, and correct the Code, substituted “Nothing

in this Code section” for “Nothing herein contained” at the beginning of subsection (c).

#### JUDICIAL DECISIONS

**“Proper purpose” to compel production of records not shown.** — Minority shareholders did not show the requisite “proper purpose” to compel production of corpo-

rate books and records, where the shareholders, who sought to place one of their number on the board of directors, failed to show that they could not achieve their pur-



ported purposes through resort to the records that had been previously furnished to them. *Stewart v. Bank of Lumber City*, 193 Ga. App. 188, 387 S.E.2d 366 (1989).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 311 et seq., 321.

**C.J.S.** — 18 C.J.S., Corporations, §§ 110, 584.

**ALR.** — Admissibility of computerized private business records, 7 ALR4th 8.

#### 7-1-440. Derivative actions by shareholders — When proper.

A derivative action may be brought by a shareholder in the right of the bank or trust company to procure a judgment in its favor against directors, officers, or other representatives of the bank or trust company, or shareholders, or third parties, or any combination thereof, whenever the bank or trust company has a claim or cause of action which the representatives of the bank or trust company, in violation of their duties, have failed to enforce, including a claim or cause of action against such representatives for their failure in this respect. (Code 1933, § 41A-2011, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 315. 19 Am. Jur. 2d, Corporations, §§ 2243-2272, 2326.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 480, 481. 18 C.J.S., Corporations, §§ 397-413.

#### 7-1-441. Derivative actions by shareholders — Restrictions on.

(a) In a derivative action brought by one or more shareholders of a bank or trust company to procure a judgment in its favor, the representatives of the bank or trust company wrongfully having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff is a shareholder of record at the time of bringing the action. It shall further allege:

(1) That the plaintiff had purchased his shares or was a shareholder of record at the time of the transaction of which he complains or that his shares thereafter devolved on him through one or more transfers by operation of law from one who was a holder of record or member at such time; or

(2) That the plaintiff is the holder of record of shares which at the time of the transaction of which he complains were held of record by a trustee of a trust in which the plaintiff held a beneficial interest or in which a beneficial interest was held by one from whom the shares have devolved upon the plaintiff through one or more transfers by operation of law.

(b) In any such action the complaint shall also allege with particularity the efforts of the plaintiff to secure the initiation of such action by the board of directors or comparable authority, or the reasons for not making such effort.

(c) Such action shall not be discontinued, compromised, or settled without the approval of the court having jurisdiction of the action. If the court shall determine that the interests of the members or of the shareholders of any class or classes will be substantially affected by such discontinuance, compromise, or settlement, the court shall direct that notice, by publication or otherwise, of the action and the proposed discontinuance, compromise, or settlement thereof be given to the members or to the shareholders of the class or classes whose interests it determines will be so affected; if notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same in such amount as the court shall determine and find to be reasonable in the circumstances.

(d) If such action is successful, in whole or in part, or if anything is received by the plaintiff or plaintiffs as the result of the judgment or compromise or settlement of the action, the court may award the plaintiff or plaintiffs reasonable expenses, including reasonable fees of attorneys, and shall direct him or them to account to the bank or trust company for the remainder of the proceeds so received by him or them.

(e) In any such action, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendants the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action; and such damages as the court may assess shall be paid to the bank or trust company for damages such bank or trust company may have sustained due to adverse publicity brought about as a result of action brought without reasonable cause. (Code 1933, § 41A-2012, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 27.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 19 Am. Jur. 2d, Corporations, §§ 2250-2253, 2273, 2275, 2279, 2280, 2286, 2290, 2301, 2326, 2440-2452, 2487-2491, 2496.

**C.J.S.** — 18 C.J.S., Corporations, §§ 397-413.

## PART 11

## DIVIDENDS, DISTRIBUTIONS, AND PREFERRED SHARE ACQUISITION

**7-1-460. Restrictions on payment of dividends; limitation of actions for dividends or distributions.**

(a) The board of directors of a bank or trust company may, from time to time, declare and the bank or trust company thereupon shall pay dividends on its outstanding shares in cash, property, or its own shares, except when the bank or trust company is insolvent or when the payment thereof would render the bank or trust company insolvent or when the declaration or payment thereof would be contrary to any restrictions contained in the articles, and subject to the following provisions:

(1) Dividends may be declared and paid in cash or property only out of the retained earnings of the bank or trust company;

(2) Dividends may not be declared or paid at any time that the bank or trust company does not have the paid-in capital and appropriated retained earnings required by Code Section 7-1-411;

(3) Dividends may not be paid without the prior approval of the department in excess of specified amounts as may be fixed by regulations of the department to assure that banks and trust companies maintain an adequate capital structure;

(4) Dividends may be declared and paid in lawfully held treasury shares or in authorized but unissued shares, provided that, in the case of a dividend of authorized but previously unissued shares, there shall be transferred to capital stock an amount equal to the aggregate par value of the shares distributed and, after payment of the dividend, the bank or trust company continues to maintain the paid-in capital and appropriated retained earnings required by Code Section 7-1-411; and

(5) No dividends payable in shares of any class shall be paid in respect to shares of any other class unless the articles so provide or unless such payment is authorized by the affirmative vote or the written consent of the holders of a majority of the outstanding shares of the class in which the payment is to be made.

(b) A split or division of the issued shares of any class into a greater number of shares of the same class without increasing the capital stock of the bank or trust company shall not be construed to be a share dividend within the meaning of this Code section.

(c) If a bank or trust company has declared a cash dividend on any shares or any other distribution payable in cash or has sold fractional shares or scrip for the account of a shareholder and has mailed to a shareholder, at his address appearing on the records of the bank or trust company, a valid



check in the amount of the dividend or other distribution or the proceeds of such sale to which such shareholder is entitled and, if such check would have been honored if duly presented to the bank on which it is drawn, no action for the recovery of such dividend or other distribution or for the amount thereof shall be brought by the shareholder or other person entitled thereto more than seven years after the date of mailing the check.

(d) If a bank or trust company has declared a dividend payable in its own shares or any other distribution payable in its own shares or in other than cash and has mailed to a shareholder, at his address appearing on the records of the bank or trust company, a certificate representing such shares or a notice setting forth the time and manner in which a distribution in other than its own shares or cash shall be paid, no action for the recovery of such dividends or other distribution or for the amount thereof shall be brought by the shareholder or other person entitled thereto more than seven years after the mailing of the share certificate or certificates or, in the case of a distribution in other than the shares of the bank or trust company or in cash, the time specified in the notice for the payment thereof.

(e) When the statute of limitations provided for in this Code section has run with respect to any unclaimed dividend, other unclaimed distribution, or unclaimed proceeds of the sale of fractional shares or scrip, the cash or property represented thereby shall thenceforth be treated as an asset of the bank or trust company. (Ga. L. 1919, p. 135, art. 19, §§ 29, 30; Code 1933, §§ 13-2029, 13-2030, 13-2031, 13-2032; Code 1933, § 41A-2101, enacted by Ga. L. 1974, p. 705, § 1.)

### JUDICIAL DECISIONS

**Former Code 1933, § 41A-2011 (see O.C.G.A. § 7-1-460) was not unconstitutional** as an unlawful delegation of legislative authority. *Commercial Bank v. Department of Banking & Fin.*, 244 Ga. 172, 259 S.E.2d 435 (1979).

**Violation of regulations enforced by suspension or cancellation of license.** — The General Assembly did not provide that violation of regulations policing the industry

and requiring certain acts to be performed in a specified manner would be a misdemeanor. In every instance, reasonable rules and regulations promulgated for administrative purposes or for policing the industry may be enforced as to licensees either by suspension or cancellation of a license. *Commercial Bank v. Department of Banking & Fin.*, 244 Ga. 172, 259 S.E.2d 435 (1979).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 252, 314.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 60.

**ALR.** — Duty and remedy as regards de-

ferring payment of dividends from assets of insolvent bank or other insolvent corporation while there are undetermined claims or preferences, 88 ALR 1301.

**7-1461. Distribution upon reduction of capital stock or paid-in capital.**

(a) Upon the decrease of capital stock of a bank or trust company pursuant to amendment of its articles as provided in this chapter, the board of directors, subject to restrictions of the articles, may distribute to the shareholders of the bank or trust company an amount in cash equal to all or part of the amount of the decrease in capital stock, if immediately after such distribution the bank or trust company would have the capital stock required by this chapter and would have the paid-in capital and appropriated retained earnings required by Code Section 7-1-411.

(b) Any portion of the amount of a decrease in capital stock which is not distributed to shareholders in accordance with this Code section shall be transferred to paid-in capital.

(c) A bank or trust company, by resolution of its board of directors, may distribute to its shareholders amounts representing a reduction in its paid-in capital, provided that after such distribution the institution shall continue to have the paid-in capital and appropriated retained earnings required by Code Section 7-1-411 and provided that such distribution shall first be approved in writing by the department. (Code 1933, § 41A-2102, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1462. Dividends and distributions must be authorized by chapter.**

The directors of a bank or trust company shall not declare dividends or authorize or ratify the distribution of any part of its assets to shareholders by purchase of its shares or otherwise, except as authorized by this chapter. (Code 1933, § 41A-2103, enacted by Ga. L. 1974, p. 705, § 1.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 251, 295.

**7-1463. Preferred share acquisition.**

(a) Unless otherwise provided in its articles, a bank or trust company, by resolution of its board of directors and with the prior approval of the department, may redeem or otherwise acquire preferred shares, if immediately after the redemption or other acquisition the bank or trust company would have the paid-in capital and appropriated retained earnings required by Code Section 7-1-411. In determining whether or not to give its approval under this subsection, the department shall give primary consideration to the question of whether or not, after the cancellation of the preferred shares, the capital accounts of the bank or trust company would be adequate to support its anticipated deposit or trust business.

(b) Preferred shares which are redeemed or otherwise acquired shall be canceled and shall not be reissued without prior approval of the department. (Code 1933, § 41A-2104, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 251, 295.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 240.

### PART 12

#### MANAGEMENT

#### 7-1-480. Board of directors.

(a) Administration of the business and affairs of a bank or trust company shall be the responsibility of a board of directors.

(b) Seventy-five percent of the directors shall be citizens of the United States and at least a majority shall:

(1) Reside in Georgia; or

(2) Reside within 40 miles of any banking location authorized to offer a complete banking or trust service.

(c) The residency requirements of paragraphs (1) and (2) of subsection (b) of this Code section shall not apply to banks having branches in states other than Georgia, provided the residency of directors is consistent with the bank's articles of incorporation and bylaws.

(d) The department may waive or modify the requirements of subsection (b) of this Code section with respect to special purpose banks organized pursuant to subsection (c) of Code Section 7-1-394.

(e) Notwithstanding other provisions of this Code section, directors who were legally qualified to serve on April 1, 1975, may continue to serve for such time as they are continuously members of the board of directors of their bank or trust company. (Ga. L. 1898, p. 78, § 4; Civil Code 1910, § 2818; Ga. L. 1917, p. 62, § 1; Ga. L. 1919, p. 135, art. 19, §§ 1, 2; Ga. L. 1927, p. 195, § 8; Code 1933, §§ 13-2001, 13-2002, 109-103; Ga. L. 1943, p. 249, § 3; Ga. L. 1947, p. 476, § 1; Ga. L. 1947, p. 480, § 1; Ga. L. 1949, p. 378, § 1; Ga. L. 1959, p. 323, § 1; Ga. L. 1961, p. 196, § 1; Ga. L. 1966, p. 590, § 6; Ga. L. 1973, p. 811, § 1; Code 1933, § 41A-2201, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1986, p. 458, § 6; Ga. L. 1987, p. 1586, § 7; Ga. L. 1997, p. 485, § 15; Ga. L. 2000, p. 174, § 9; Ga. L. 2001, p. 970, § 4.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2000, "bank's" was substituted for "banks" in subsection (c).

**Law reviews.** — For article discussing limitations on the establishment and transaction of international banking in Georgia, see



27 Mercer L. Rev. 629 (1976). For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 329 et seq., 480.      **C.J.S.** — 9 C.J.S., Banks and Banking, §§ 99, 104-107, 111.

#### 7-1481. Adopting, amending, and repealing bylaws.

The board of directors shall have the power to adopt, amend, or repeal bylaws as specified in paragraph (4) of Code Section 7-1-260 unless such power is reserved exclusively to the shareholders by the articles or in bylaws previously adopted by the shareholders; but any bylaws adopted by the board of directors may be altered, amended, or repealed and new bylaws adopted by the shareholders. The shareholders may prescribe that any bylaw or bylaws adopted by them shall not be altered, amended, or repealed by the board of directors. Copies of the bylaws and any change, addition, or amendment thereto shall be filed with the department immediately upon adoption by the directors or the shareholders. (Ga. L. 1898, p. 78, § 5; Civil Code 1910, § 2819; Code 1933, § 109-104; Code 1933, § 41A-2202, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 639, 640.      **C.J.S.** — 9 C.J.S., Banks and Banking, § 47.

#### 7-1482. Number, term, and compensation of directors.

(a) The articles or bylaws of any bank or trust company may fix the number of directors of its policy-making board at not less than five nor more than 25 and may provide that the board may, within such limitation, increase or decrease the number of directors by not more than two in any one year, provided that nothing in this subsection shall require a bank with a board of directors of less than five on July 1, 1972, to increase its board to five members.

(b) Except as otherwise provided in this chapter, each director shall be elected by the shareholders for a term of one year or for staggered terms as provided in Code Section 14-2-806 and shall serve until he or she resigns, is removed, or becomes disqualified or until his or her successor shall have been duly elected and qualified.

(c) Except as otherwise provided in the articles or bylaws, the board of directors may fix the compensation for directors; and a director may be a salaried officer of the bank or trust company.

(d) Notwithstanding the requirements of this Code section, the board of directors of a bank may appoint one or more nonpolicy-making regional

boards of directors to consist of a number of persons to be determined by the board. The members of such regional boards may not set bank policy but may exercise certain powers, duties, and responsibilities as delegated by the board. Such regional board members shall have the same status as nonpolicy-making officers of the bank. All such delegations shall be documented in detail in the minutes of the board. (Ga. L. 1898, p. 78, § 4; Civil Code 1910, § 2818; Ga. L. 1917, p. 62, § 1; Ga. L. 1919, p. 135, art. 19, § 1; Code 1933, §§ 13-2001, 109-103; Ga. L. 1947, p. 476, § 1; Ga. L. 1947, p. 480, § 1; Ga. L. 1966, p. 590, § 6; Code 1933, § 41A-2203, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2000, p. 174, § 10.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2001, a comma was deleted following “Code Section 14-2-806” in subsection (b).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 330, 335.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 99, 104, 105, 118.

#### **7-1-483. Meetings of board; quorum; committees; acting without meeting.**

(a) The board of directors shall hold regular meetings at such times as may be fixed by the bylaws and shall at all times be subject to call by the chairman of the board, by the president, or by any two members of the board. The board shall meet at least once in ten different months of each calendar year unless an alternative schedule is approved in writing by the department, but in no event shall the board meet less frequently than once in each calendar quarter.

(b) Unless otherwise provided in the articles or bylaws:

(1) A majority of all the directors in office shall constitute a quorum for the transaction of business; and actions of a majority of those present at a meeting at which a quorum is present shall be actions of the board;

(2) The board of directors may designate three or more of its number to constitute an executive committee or other committees which, to the extent provided in such resolution, shall have and exercise the authority of the board of directors in regard to the business of the bank or trust company; and

(3) Any action which may be taken at a meeting of the directors or of the members of an executive or other committee may be taken without a meeting if a consent or consents in writing setting forth the action shall be signed by all of the directors or all of the members of the executive or other committee and filed with the secretary of the bank or trust company. (Ga. L. 1898, p. 78, § 4; Civil Code 1910, § 2818; Ga. L. 1917, p. 62, § 1; Ga. L. 1919, p. 135, art. 19, § 4; Code 1933, §§ 13-2004, 109-103; Ga. L. 1947, p. 476, § 1; Code 1933, § 41A-2204, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 28; Ga. L. 1988, p. 296, § 1.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 352.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 98.

**7-1484. Oath of directors; liability of persons who have not subscribed to such oath.**

(a) Each director, before assuming office, shall take an oath or affirmation that he will diligently and honestly perform his duties in the administration of the affairs of the bank or trust company, that he will not permit a willful violation of law by the bank or trust company, and that he meets the eligibility requirements of this chapter and of the articles and bylaws.

(b) A copy of the oath shall be signed by each director and shall be placed into the minutes of the meetings of the directors. No director shall be authorized to participate in the affairs of the board or receive any compensation for service as a director until the oath has been executed by such director. Any person seeking to act in the capacity of a director before subscribing to the oath and otherwise qualifying for service pursuant to the bylaws of the bank or the laws and regulations governing the operations of the bank shall be fully liable for his actions to the same extent as if that person had qualified to serve as a bank director. (Ga. L. 1919, p. 135, art. 19, § 3; Code 1933, § 13-2003; Code 1933, § 41A-2205, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 12; Ga. L. 1990, p. 8, § 7.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 334, 339.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 103.

**7-1485. Removal of directors; vacancies.**

(a) The entire board of directors or an individual director may be removed without cause by the vote of shareholders entitled to cast at least a majority of the votes which all shareholders would be entitled to cast at an annual election of directors.

(b) The board may remove a director from office if:

(1) He is adjudicated an incompetent by a court or is convicted of a felony;

(2) He does not, within 60 days after his election or such longer time as the bylaws may specify, accept the office in writing or by attendance at a meeting and fulfill other requirements for holding the office;

(3) He fails to attend regular meetings of the board for six successive meetings without having been excused by the board; or



(4) He was an employee or duly elected officer of the bank or trust company and was discharged or resigned at the request of the board for reasons relating to performance of duties as an employee or officer of the bank or trust company.

(c) Vacancies in the board of directors, whether caused by removal or otherwise and including vacancies resulting from an increase in the number of directors, may be filled by the remaining members of the board, even though less than a quorum. Each director so elected shall be a director until his successor is elected by the shareholders, who shall make such election at the next annual meeting of shareholders or at any special meeting called for that purpose prior thereto. (Ga. L. 1919, p. 135, art. 19, § 1; Code 1933, § 13-2001; Ga. L. 1947, p. 480, § 1; Ga. L. 1966, p. 590, § 6; Code 1933, § 41A-2206, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 13; Ga. L. 1989, p. 1211, § 9.)

**Cross references.** — Right of department to require immediate suspension from office of director, officer, or employee of financial

institution who is found to be dishonest, incompetent, etc., § 7-1-71.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 329 et seq., 480.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 99, 104, 105.

#### 7-1-486. Honorary and advisory positions.

The board of directors of any bank or trust company may appoint an individual as an honorary director or director emeritus or member of an advisory board. An individual so appointed may be compensated but may not vote at any meeting of the board of directors or be counted in determining a quorum and shall not have any responsibility or be subject to any liability imposed upon a director, or otherwise be deemed a director. (Code 1933, § 41A-2207, enacted by Ga. L. 1974, p. 705, § 1.)

#### 7-1-487. Audits and financial reports.

(a) The board of directors shall at least once each year have made by independent certified public accountants an audit of the books and affairs of the bank or trust company, including such matters as may be required by the department and including, in the case of a trust company, accounts held in a fiduciary or other representative capacity. An audit of a bank holding company performed in accordance with this Code section may be made in lieu of individual audits of subsidiaries of the bank holding company. The department may by regulation establish minimum standards for audits and reports under this Code section.

(b) A report of the audit made under subsection (a) of this Code section shall be signed by the accountants who make it. A signed copy of the report

shall be submitted to the board for approval or rejection and kept in the files of the bank or trust company. The bank or trust company shall submit the audit to the department in accordance with department regulations. (Code 1933, § 41A-2208, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1211, § 10; Ga. L. 1997, p. 485, § 16.)

#### RESEARCH REFERENCES

C.J.S. — 9 C.J.S., Banks and Banking,  
§ 116.

#### **7-1488. Officers, agents, and employees; employee share plans.**

(a) A bank or trust company shall have a president, a secretary, and such other officers as the directors may from time to time designate. An individual may hold more than one office, except that the individual shall not be both president and secretary.

(b) Except as otherwise provided in the articles or bylaws, the board of directors shall elect the officers, fix their compensation, and fill vacancies, however occurring. An officer elected or appointed by the board may be removed by the board at any time, whenever in its judgment the best interests of the institution will be served thereby, without prejudice to any contract right of such officer. The department shall immediately be notified in writing when the individual holding the position of chief executive officer of the bank changes.

(c) The officers, as between themselves and the bank or trust company, shall have such authority and perform such duties as may be provided in the bylaws adopted by the board.

(d) A bank or trust company may also employ such agents or employees as may be required for the prompt and orderly discharge of its business.

(e)(1) Except as otherwise provided in the articles, a bank or trust company may adopt and carry out a plan, approved by the directors and the affirmative vote of a majority of the shares entitled to vote thereon, for the sale of shares, or for the granting of options for shares, to some or all of the officers and employees of the bank or trust company or of any affiliate of the bank or trust company or to a trustee on behalf of such employees, upon such terms and conditions and in such manner as may be provided by the bylaws or by the board. In any such plan:

(A) Such shares may be sold or optioned upon terms (not less than the par value thereof) which are deemed advantageous to the bank or trust company by the directors other than directors who may benefit by their action or, if the number of directors who will not benefit by the action is fewer than three, by the shareholders; and

(B) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders as to the adequacy of the consideration received for any rights or options to purchase shares under the plan shall be conclusive.

(2) Such a plan may be adopted whether or not it qualifies for special tax treatment under the laws of the United States. (Ga. L. 1898, p. 78, § 5; Civil Code 1910, § 2819; Ga. L. 1919, p. 135, art. 19, § 9; Ga. L. 1922, p. 63, § 1; Code 1933, §§ 13-2009, 109-104; Code 1933, § 13-912, enacted by Ga. L. 1966, p. 590, § 3; Ga. L. 1968, p. 1045, § 1; Ga. L. 1969, p. 958, § 1; Code 1933, § 41A-2209, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 14; Ga. L. 1995, p. 673, § 17.)

### JUDICIAL DECISIONS

**Evidence of stock option.** — Where there was conflicting evidence as to the existence of a stock option, whether plaintiff bank president was promised that the option would be submitted to the shareholders, and whether it was plaintiff or the defendant

bank who prevented the performance of a condition precedent, the trial court erred in granting the bank's motion for summary judgment. *Hammond v. Bank of Newnan*, 217 Ga. App. 49, 456 S.E.2d 678 (1995).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 329 et seq., 480.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 100, 104, 105, 118.

**ALR.** — Powers of bank president or vice president, 1 ALR 693; 67 ALR 970.

Remedies for determining right or title to

office in unincorporated private association, 82 ALR2d 1169.

Liability, under National Banking Act (12 USCS § 93), of national bank directors for retaliation against officer or employee who discloses or refuses to commit banking irregularity, 101 ALR Fed. 377.

### 7-1-489. Bonds.

Any director who is authorized to handle money or negotiable assets on behalf of a bank or trust company and all officers and employees of a bank or trust company shall be bonded by a regularly incorporated surety company authorized to do business in this state, and the bank or trust company may pay the cost of such bonds. The form, amount, and surety of such bonds shall be such as are approved by the board of directors; but the department may require an additional amount or new or additional surety. (Ga. L. 1919, p. 135, art. 19, § 10; Ga. L. 1920, p. 102, § 1; Ga. L. 1922, p. 63, § 1; Code 1933, § 13-2010; Code 1933, § 41A-2210, enacted by Ga. L. 1974, p. 705, § 1.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 346, 480.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 102, 264.



**7-1-490. Responsibility of directors and officers; delegation of investment decisions.**

(a) Directors and officers of a bank or trust company shall discharge the duties of their respective positions in good faith and with that diligence, care, and skill which ordinarily prudent men would exercise under similar circumstances in like positions. In discharging his duties, a director or officer, when acting in good faith, shall be entitled to rely upon information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of the bank or trust company whom the director or officer reasonably believes to be reliable and competent in the matters presented;

(2) Counsel, public accountants, or other persons as to matters which the director or officer reasonably believes to be within such person's professional or expert competence; or

(3) A committee of the board upon which the director or officer does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws, as to matters within that committee's designated authority, which committee the director or officer reasonably believes to merit confidence;

but such director or officer shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A director or officer who so performs his duties shall have no liability by reason of being or having been a director or officer of the bank or trust company.

(b) A bank, through its board of directors, may delegate to a correspondent bank the power to determine, within the limits set by law, the investments in which its assets, including reserve assets, may be held, provided that the bank must obtain the prior written approval of the department for such delegation. (Code 1933, § 41A-2211, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1977, p. 730, § 7; Ga. L. 1982, p. 3, § 7.)

**RESEARCH REFERENCES**

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 106, 107, 111.

**ALR.** — Powers of bank president or vice-president, 1 ALR 693; 67 ALR 970.

Implied, apparent or ostensible, and presumed authority of bank cashier to surrender or waive some right of bank, 108 ALR 713.

Liability, under National Banking Act (12 USCS § 93), of national bank directors for retaliation against officer or employee who discloses or refuses to commit banking irregularity, 101 ALR Fed. 377.

**7-1-491. Financing involving directors or officers.**

In addition to other provisions in this chapter and federal law, a bank or trust company shall not make loans or otherwise extend financing to any one of its directors or policy-making officers except on terms, rates, and conditions which are not preferential. Preferential terms, rates, and conditions shall be determined by comparison to those terms, rates, and conditions offered contemporaneously to other borrowers making substantially similar loan requests, having substantially similar credit histories, and offering substantially similar collateral. Such loans shall be made only after the application of prudent loan underwriting criteria normally applied to loan requests of a similar nature from applicants who are not directors and policy-making officers. Approval procedures for such loans should be designed to minimize any potential abuse by bank insiders. (Ga. L. 1919, p. 135, art. 19, §§ 11, 12; Ga. L. 1920, p. 102, § 1; Code 1933, §§ 13-2011, 13-2012; Ga. L. 1968, p. 329, § 1; Code 1933, § 41A-2212, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1978, p. 1717, § 5; Ga. L. 1983, p. 602, § 12; Ga. L. 1984, p. 949, § 5; Ga. L. 1995, p. 673, § 18.)

**Administrative rules and regulations.** — Loans and discounts, Official Compilation of Rules and Regulations of State of Georgia,

Department of Banking and Finance, Banks, Chapter 80-1-5.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 451 et seq.

**ALR.** — Transactions by which officers or directors of banks realize on their deposits as unlawful preference, 84 ALR 1493.

Construction and application of criminal

statutes relating to loans by bank to officers, directors, stockholders, or employees of bank or of banking department, 90 ALR 509.

Construction and application of statutes prohibiting or limiting loans to bank's officers or directors, 49 ALR3d 727.

**7-1-492. Prohibitions applicable to directors, officers, and employees.**

(a) No director, officer, or employee of a bank or trust company shall:

(1) Receive anything of value for procuring or attempting to procure any loan from or investment by the bank or trust company;

(2) Purchase, or directly or indirectly be interested in purchasing, from the bank or trust company for less than its face value any promissory note or other evidence of indebtedness issued by the bank or trust company;

(3) Purchase or sell any other asset to the bank or trust company except:

(A) Upon terms not less favorable to the bank or trust company than those offered to other persons or corporations; and

(B) With the prior approval of the board of directors or a committee thereof authorized to act for the board, unless the transaction is made in the regular course of business.

(b) No director shall be eligible to vote concerning any purchase or sale where he is or would be a party to the transaction.

(c) It shall be unlawful for any bank or trust company to lend to any officer, director, or employee any funds held in trust under powers granted in this chapter. (Code 1933, § 41A-2213, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1996, p. 848, § 7.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 451, 455.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 464.

**ALR.** — Powers of bank president or vice-president, 1 ALR 693; 67 ALR 970.

Transactions by which officers or directors

of banks realize on their deposits as unlawful preference, 84 ALR 1493.

Implied, apparent or ostensible, and presumed authority of bank cashier to surrender or waive some right of bank, 108 ALR 713.

#### 7-1-493. Actions against directors and officers.

(a) An action may be brought by any of the persons named in subsection (b) of this Code section against one or more directors or officers of a bank or trust company to procure for the benefit of the bank or trust company a judgment for the following relief:

(1) To compel the defendant to account for his official conduct, or to decree any other relief called for by his official conduct, in the following cases:

(A) The neglect of, failure to perform, or other violation of his duties in the management of the bank or trust company or in the disposition of corporate assets committed to his charge;

(B) The acquisition by himself, transfer to others, loss, or waste of corporate assets due to any neglect of, failure to perform, or other violation of his duties;

(C) The appropriation, in violation of his duties, of any business opportunity of the bank or trust company;

(2) To enjoin a proposed unlawful conveyance, assignment, or transfer of corporate assets or other unlawful corporate transaction, where there is sufficient evidence that it will be made;

(3) To set aside an unlawful conveyance, assignment, or transfer of corporate assets, where the transferee knew of its unlawfulness and is made a party to the action.



(b) An action may be brought for the relief provided in this Code section and in Code Section 7-1-494, relating to the liability of directors in certain cases, by the bank or trust company, or by a receiver, trustee in bankruptcy, officer, director, or judgment creditor thereof, or by a shareholder in accordance with Code Sections 7-1-440 and 7-1-441, relating to derivative actions.

(c) No action shall be brought for the relief provided in this Code section more than four years from the time the cause of action accrued.

(d) This Code section shall not limit any liability otherwise imposed by law upon any director or officer or any third party, provided that after April 1, 1975, Code Section 14-4-65, relating to improper dividends and liability of officers, shall no longer be applicable to officers or directors of banks or trust companies.

(e) Notwithstanding the foregoing, a bank or trust company may provide through an amendment to its articles of incorporation for the elimination or limitation of the personal liability of a director to the shareholders of the bank or trust company to the same extent as a business corporation incorporated under the provisions of Chapter 2 of Title 14, provided that such an amendment to the articles of incorporation must be adopted by the affirmative vote of two-thirds of the total shares outstanding. (Code 1933, § 41A-2214, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 29; Ga. L. 1987, p. 1586, § 8; Ga. L. 1993, p. 917, § 4.)

**Law reviews.** — For article, “Statutes of Limitation: Counterproductive Complexities,” see 37 Mercer L. Rev. 1 (1985).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 404 et seq., 419.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 480, 481.

**ALR.** — Constitutionality of statutes relating to personal liability of officers or directors of bank, 57 ALR 888.

False representation by officers or directors of bank or building and loan association that impairment of capital has been made good, as basis of action against them, 144 ALR 1498.

Liability, under National Banking Act (12 USCS § 93), of national bank directors for retaliation against officer or employee who discloses or refuses to commit banking irregularity, 101 ALR Fed. 377.

Standard of liability applicable to action against directors or officers of failed depository institution pursuant to 12 USCS § 1821(k), 125 ALR Fed. 435.

#### 7-1-494. Liability of directors in certain cases.

(a) In addition to any other liabilities imposed by law upon directors of a bank or trust company:

(1) Directors of a bank or trust company who vote for or assent to the declaration of any dividend or other distribution of the assets of a bank or trust company to its shareholders which is not authorized by this chapter or is contrary to any restrictions contained in the articles shall be jointly and severally liable to the bank or trust company for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or the restrictions in the articles to the extent that any depositor, creditor, or shareholder of the bank or trust company has suffered damage as a result thereof; and

(2) The directors of a bank or trust company who vote for or assent to any distribution of assets of a bank or trust company to its shareholders during the voluntary liquidation of the bank or trust company without the payment and discharge of, or making adequate provisions for, all known debts, obligations, and liabilities of the bank or trust company shall be jointly and severally liable to the bank or trust company for the value of such assets which are distributed, to the extent that such debts, obligations, and liabilities of the bank or trust company are not thereafter paid and discharged.

(b) A director of a bank or trust company who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail or statutory overnight delivery to the secretary of the bank or trust company within 24 hours after the adjournment of the meeting. Such right to dissent shall not apply to a director who, being present at the meeting, failed to vote against such action.

(c) A director shall not be liable under subsection (a) of this Code section if he relied and acted in good faith upon financial information of the bank or trust company represented to him to be correct by the president or the officer of the bank or trust company having charge of its books of account or stated in a written report by an independent or certified public accountant or firm of such accountants to reflect fairly the financial condition of such bank or trust company; nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be represented fairly on the books of the bank.

(d) Any director against whom any claim shall be asserted under or pursuant to this Code section for the payment of a dividend or other distribution of assets of a bank or trust company and who shall be held liable thereon shall be entitled to contribution from the shareholders who,

knowing such dividend or distribution to have been made in violation of this chapter, accepted or received any such dividends or assets in proportion to the amounts received by them respectively.

(e) Any director against whom any claim shall be asserted under or pursuant to this Code section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

(f) No liability under this Code section shall be asserted more than six years from the time the cause of action accrued. (Code 1933, § 41A-2215, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2000, p. 1589, § 3.)

**Editor's notes.** — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code

section is applicable with respect to notices delivered on or after July 1, 2000.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 404 et seq., 419.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 106, 107, 111, 122-124, 227-229, 481.

**ALR.** — Constitutionality of statutes relating to personal liability of officers or directors of bank, 57 ALR 888.

Running of statute of limitations against action against bank directors or officers for making excessive or unauthorized loans, 83 ALR 1204.

Personal liability of officers or directors of bank in respect of trust funds illegally deposited in bank, 112 ALR 1214.

Construction and application of statutes relating to civil liability of directors, officers or employees of bank, in case of false reports or statements, 114 ALR 472.

Standard of liability applicable to action against directors or officers of failed depository institution pursuant to 12 USCS § 1821(k), 125 ALR Fed. 435.

## PART 13

### AMENDMENT OF ARTICLES

#### 7-1-510. Authorized amendments; articles entirely restated; notice to Secretary of State.

(a) A bank or trust company may, in the manner provided in this part, amend its articles at any time in order to make any change therein which would then be authorized for inclusion in original articles under this chapter, including without limitation an amendment:

- (1) To adopt a new name permitted to be used under this chapter;
- (2) To renew the term for which it is to exist or to provide for perpetual duration;
- (3) To change, add to, or diminish the statement of its purpose or purposes;
- (4) To increase or diminish the aggregate number of shares which it has authority to issue or to reclassify the shares by changing the number,



par value, designations, preferences, redemption provisions, or relative, participating, optional, or other special rights of the shares or the qualifications, limitations, or restrictions of such rights, either with or without an increase or decrease in the number of shares;

(5) To restate the articles in their entirety;

(6) To change its main office location to a new location; or

(7) In the case of a bank, to become a trust company and, in the case of a trust company, to become a bank, with or without retaining an existing capacity to engage in the banking or trust business as the case may be.

(b) Articles restated in their entirety shall state the street address and county of the current instead of the original main office of the bank or trust company and need not state the names or other information concerning the first directors or the incorporators.

(c) Articles need not be amended for the addition or change of a registered agent or the change of a registered office. The bank or trust company shall, however, notify in writing the department and the Secretary of State of such changes. (Ga. L. 1898, p. 78, § 7; Ga. L. 1910, p. 98, § 1; Civil Code 1910, § 2821; Ga. L. 1917, p. 81, § 1; Ga. L. 1919, p. 135, art. 9, § 1; Ga. L. 1919, p. 135, art. 10, § 1; Ga. L. 1920, p. 102, § 1; Ga. L. 1927, p. 344, §§ 5, 6; Code 1933, §§ 13-1001, 13-1101, 109-301, 109-302, 109-401, 109-505; Ga. L. 1943, p. 249, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 240, § 1; Ga. L. 1964, p. 75, § 1; Ga. L. 1965, p. 501, § 2; Ga. L. 1966, p. 692, §§ 28, 37; Ga. L. 1968, p. 1045, § 2; Code 1933, § 13-1201, enacted by Ga. L. 1969, p. 964, § 1; Ga. L. 1972, p. 727, § 4; Code 1933, § 109-302.1, enacted by Ga. L. 1973, p. 525, § 1; Code 1933, § 41A-2301, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 8; Ga. L. 1998, p. 795, § 21; Ga. L. 1999, p. 674, § 9.)

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the provisions, opinions under former Code 1933, § 41A-2305 are included in the annotations for this section.

**Department cannot qualify approval of proposed articles of amendment.** — The notice required under former Code 1933, § 41A-2305 must unqualifiedly state approval or disapproval by Department of Banking and Finance of proposed articles of

amendment in the form in which they are submitted and the department may not in its approval modify articles or otherwise condition its approval on a particular method of operation under approved articles; any attempt to qualify its approval is beyond the jurisdiction of the department and therefore void. 1975 Op. Att'y Gen. No. 75-126 (decided under former Code 1933, § 41A-2305).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 183.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 33.

**7-1-511. Proposal and adoption of amendments.**

(a) An amendment of the articles shall be proposed by adoption of a resolution by the board of directors directing that it be submitted to a vote at a meeting of shareholders.

(b) The resolution proposing an amendment or amendments shall contain the language of each amendment by setting forth in full the articles as they would be amended or any provision thereof as it would be amended or by setting forth in full any matter to be added to or deleted from the articles. A copy of the resolution or a summary thereof shall be included with the notice of the meeting required under Code Section 7-1-6.

(c) Except as provided in subsections (d) and (e) of this Code section, adoption of each amendment shall require the affirmative vote of the shareholders entitled to cast at least a majority of the votes which all shareholders are entitled to cast thereon and, if any class is entitled to vote thereon as a class, of the holders of at least a majority of the outstanding shares of such class.

(d) If a proposed amendment would:

(1) Make any change in the preferences, redemption provisions, qualifications, limitations, restrictions, or special or relative rights of the shares of any class adverse to such class;

(2) Increase or decrease the par value of the shares of any class;

(3) Increase the authorized number of shares of any class;

(4) Limit or deny the existing preemptive rights of the shares of any class; or

(5) Authorize a new class of shares or increase the number of authorized shares of any class, senior or superior in any respect to the shares of any class previously authorized,

the holders of the outstanding shares of such class shall be entitled to vote as a class on such amendment regardless of any limitation stated in the articles on the voting rights of such class.

(e) Any amendment for the purposes set forth in paragraph (7) of subsection (a) of Code Section 7-1-510 shall require for its adoption the affirmative vote of at least two-thirds of all the shares entitled to vote thereon or of each class entitled to vote thereon where voting by class is required. (Ga. L. 1917, p. 81, § 2; Ga. L. 1919, p. 135, art. 9, §§ 1, 2; Ga. L. 1920, p. 102, § 1; Ga. L. 1927, p. 344, § 6; Code 1933, §§ 13-1001, 13-1002, 13-2101, 109-402, 109-507; Ga. L. 1943, p. 249, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 240, § 1; Ga. L. 1957, p. 501, § 1; Ga. L. 1963, p. 550, § 1; Ga. L. 1965, p. 501, § 2; Ga. L. 1966, p. 463, § 2; Ga. L. 1966, p. 692, § 29; Ga. L. 1968, p. 1045, §§ 1, 2; Code 1933, § 13-1201, enacted by Ga. L. 1969, p. 964,

§ 1; Ga. L. 1972, p. 727, §§ 3, 4; Code 1933, § 41A-2302, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1999, p. 674, § 10.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 183.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 33.

#### 7-1-512. Execution, contents, filing, and effect of articles of amendment.

(a) Upon the adoption of an amendment, articles of amendment shall be signed by two duly authorized officers of the bank or trust company under its seal and shall contain:

- (1) The name of the bank or trust company;
- (2) The street address and county of its main office;
- (3) Whether it was incorporated with banking or trust powers or both;
- (4) The time and place of the meeting of shareholders at which the shareholders approved the resolution of the board of directors, as originally proposed or as amended, and the kind and period of notice given to the shareholders;
- (5) The number of shares entitled to vote on the amendment and, if the shares of any class are entitled to vote as a class, the number of shares of each such class;
- (6) The number of shares voted for and against the amendment and, if shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the amendment; and
- (7) The amendment adopted, which shall be set forth in full.

(b) The articles of amendment shall be filed with the department in triplicate together with:

- (1) The fee required by Code Section 7-1-862; and
- (2) As soon as possible, a publisher's affidavit as proof of publication of the advertisement required by Code Section 7-1-513.

(c) The filing of articles of amendment shall constitute an application for a certificate of amendment. If the articles of amendment involve a change in the name of a bank or trust company, it shall reserve the proposed new name under the procedures of Code Section 7-1-131. (Code 1933, § 41A-2303, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 30; Ga. L. 1981, p. 1366, § 15; Ga. L. 1983, p. 602, § 13; Ga. L. 1989, p. 1257, § 9; Ga. L. 1998, p. 795, § 22.)



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 183.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 33.

**7-1-513. Certification of articles of amendment; delivery to bank or trust company; publication of notice.**

When the articles of amendment are filed, the department shall certify one of the copies thereof and deliver the same to the bank or trust company. The bank or trust company shall cause to be published in a publication as specified in the rules, regulations, or written policies of the department a copy of the articles of amendment or, in lieu thereof, a statement in substantially the following form:

**NOTICE OF AMENDMENT**

An application for a certificate of amendment of its articles of incorporation has been made by (name of bank or trust company) by filing such application with the Department of Banking and Finance in accordance with the applicable provisions of Chapter 1 of Title 7 of the Official Code of Georgia Annotated, known as the "Financial Institutions Code of Georgia." The (purpose) (purposes) of said articles of amendment (is) (are) (state the purpose of each amendment affected by the articles of amendment).

The articles of amendment or the statement must be published once a week for two consecutive weeks with the first publication occurring within ten days of receipt by the newspaper of the articles of amendment or statement. (Ga. L. 1919, p. 135, art. 9, §§ 3, 4; Code 1933, §§ 13-1003, 13-1004; Ga. L. 1966, p. 692, §§ 30, 31; Code 1933, § 41A-2304, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 31; Ga. L. 1989, p. 1257, § 10; Ga. L. 1998, p. 795, § 23.)

**7-1-514. Approval or disapproval of articles of amendment.**

(a) Upon receipt of the articles of amendment, the department shall conduct such investigation as it may deem necessary to determine:

(1) That the articles of amendment and supporting items satisfy the requirements of this chapter;

(2) Where the amendment would grant new powers or status to a bank or trust company, that the criteria for the granting of such powers or status as an original matter have been satisfied;

(3) Where the amendment decreases the capital stock of the institution, that the remaining capital stock will be adequate to support its anticipated banking or trust business;

(4) Where the amendment provides for a change to a new location, that the criteria for establishing a banking office at the new location have been satisfied; and

(5) That the interests of the shareholders, depositors, and the public will not be impaired by the amendment.

(b) Within 60 days after receipt of the articles of amendment, the department, in its discretion, shall approve or disapprove the articles of amendment on the basis of its investigation and criteria set forth in subsection (a) of this Code section. If the department shall approve the articles of amendment, it shall deliver its written approval to the Secretary of State with a copy of the amendment attached and notify the bank or trust company of its action. If the department shall disapprove the articles of amendment, it shall give written notice to the bank or trust company and shall furnish to the bank or trust company a statement generally setting out the unfavorable factors influencing its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review as provided in Code Section 7-1-90. (Ga. L. 1919, p. 135, art. 9, § 5; Code 1933, § 13-1005; Ga. L. 1966, p. 590, § 4; Ga. L. 1966, p. 692, § 32; Ga. L. 1968, p. 1045, § 4; Code 1933, § 41A-2305, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 11; Ga. L. 1999, p. 674, § 11.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Notice must be unqualified.** — The notice required under former Code 1933, § 41A-2305 (see O.C.G.A. § 7-1-514) must unqualifiedly state approval or disapproval by Department of Banking and Finance of proposed articles of amendment in the form in which they are submitted and the depart-

ment may not in its approval modify articles or otherwise condition its approval on a particular method of operation under approved articles; any attempt to qualify its approval is beyond the jurisdiction of the department and therefore void. 1975 Op. Att'y Gen. No. 75-126.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 183.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 33.

#### 7-1-515. Issuance of certificate of amendment.

If all the fees and charges required by law have been paid and, in the case of a change of name, if the proposed new name of the bank or trust company continues to be reserved or is available on the records of the Secretary of State, upon the receipt by the Secretary of State of the written approval of the department and of proof of publication of the amendments as required by Code Section 7-1-513, the Secretary of State shall immediately issue to the bank or trust company a certificate of amendment and shall retain a copy thereof along with the approved articles of amendment, the written approval of the department, and the proof of publication. (Ga.

L. 1919, p. 135, art. 9, § 7; Code 1933, § 13-1007; Ga. L. 1966, p. 692, § 34; Code 1933, § 41A-2306, enacted by Ga. L. 1974, p. 705, § 1.)

#### 7-1-516. Effect of certificate of amendment.

(a) As of the issuance of the certificate of amendment by the Secretary of State, each amendment shall become effective and the articles shall be deemed to be amended accordingly.

(b) The certificate of amendment shall be conclusive evidence of the performance of all conditions required by this chapter for amendment of articles, except as against the state.

(c) No amendment shall affect any existing cause of action in favor of or against the bank or trust company, any pending action in which the bank or trust company is a party, or existing rights of persons other than shareholders. If the amendment changes the name of the bank or trust company, no action by or against the institution shall be abated for that reason. (Code 1933, § 41A-2307, enacted by Ga. L. 1974, p. 705, § 1.)

### PART 14

#### MERGER AND CONSOLIDATION OF STATE BANKS AND TRUST COMPANIES

##### JUDICIAL DECISIONS

**Constitutionality of impairment of shareholders' rights under part.** — Application of provisions dealing with merger and consolidation of state banks does not impair share-

holders' rights in such a way as to offend constitutional prohibition against retroactivity. *Baugh v. Citizens & S. Nat'l Bank*, 248 Ga. 180, 281 S.E.2d 531 (1981).

##### OPINIONS OF THE ATTORNEY GENERAL

**Disclosure and approval requirements for mergers involving banks** are generally more difficult than same procedures for nonbank corporations. 1981 Op. Att'y Gen. No. 81-103.

**Banks are "corporations" for purposes of § 10-5-9(12).** — Banks should be considered to fall within term "corporation" as it is used in registration exemption in O.C.G.A. § 10-5-9(12) since bank shareholders, in merger transactions, are adequately protected by other statutory provisions which effectuate the investor protection purpose of

O.C.G.A. Ch. 5, T. 10. In addition, banks should be considered "corporations" because they are given similar corporate powers as nonbank corporations, thereby evidencing intent on part of General Assembly to treat banks as corporations for purposes of general corporate law. 1981 Op. Att'y Gen. No. 81-103.

**Language contained in former § 14-2-215(a) (see O.C.G.A. § 14-2-1108) is not inconsistent** with or contrary to express provisions of O.C.G.A. Ch. 1, T. 7. 1972 Op. Att'y Gen. No. 72-169.

##### RESEARCH REFERENCES

**ALR.** — Novation where bank transfers its assets to another bank which assumes its obligation, 79 ALR 82.



**7-1-530. Authority to merge or consolidate; merger or consolidation across state lines; required provisions of the merger plan.**

(a) Upon compliance with the requirements of this part and other applicable laws and regulations, including any branching and minimum age laws and regulations, one or more banks or trust companies may merge or consolidate, provided that an institution exercising trust powers alone may merge or consolidate only with another such trust company.

(b) A corporation other than a bank or trust company may be merged into or consolidated with a bank or trust company, provided that:

(1) The resulting institution is a bank or trust company;

(2) The resulting institution holds only assets and liabilities and is engaged only in activities which may be held or engaged in by a bank or trust company; and

(3) The merger or consolidation is not otherwise unlawful.

(c) A merger or consolidation pursuant to subsection (b) of this Code section shall be made by compliance with the requirements of this part. Title 14 shall not be applicable to such a merger or consolidation.

(d) A merger or consolidation across state lines of any one or more banks or trust companies shall also be subject to the provisions of Part 20 of this article.

(e) In the case of a merger of a Georgia state bank with any other bank or banks, with the Georgia bank as the resulting bank, any assets, lines of business, activities, or powers which may accrue to the resulting bank which would not be allowed for a Georgia state bank shall be provided for in the plan of merger. Such plan shall include the proposal for holding or disposal of such assets or the continuation or termination of such line of business, activity, or power. The department shall review the plan to determine whether, in the interest of safety and soundness and consistent with the other objectives of Code Section 7-1-3, the activity, power, asset, or line of business should be approved, denied, or phased out within a reasonable period of time, to be determined by the department. (Ga. L. 1919, p. 135, art. 13, § 1; Code 1933, § 13-1401; Ga. L. 1973, p. 278, § 1; Code 1933, § 41A-2401, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1996, p. 848, § 8; Ga. L. 1997, p. 485, § 17; Ga. L. 2000, p. 174, § 11; Ga. L. 2001, p. 970, § 5; Ga. L. 2003, p. 843, § 6.)

**The 2003 amendment**, effective July 1, 2003, inserted “and minimum age” near the middle of subsection (a).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, “article” was substituted for “chapter” in subsection (d).

**Law reviews.** — For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

### OPINIONS OF THE ATTORNEY GENERAL

**Former Code 1933, § 41A-2401** (see **O.C.G.A. § 7-1-530**) clearly had the effect of **modifying pro tanto former Code 1933, § 22-1006** (see § 14-2-1108): in cases of clear conflict between statutes the later repeals the earlier by implication. Moreover, even if the two had been enacted together, § 41A-2401 would control former § 22-1006 because it is the more specific provision. 1978 Op. Att'y Gen. No. 78-36.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 192 et seq., 234.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 158-162, 640.

### 7-1-531. Requirements for merger or consolidation plan; modification of plan.

(a) The requirements for a merger or consolidation which must be satisfied by the parties thereto are as follows:

(1) The parties shall adopt a plan stating the method, terms, and conditions of the merger or consolidation, including the rights under the plan of the shareholders of each of the parties and any agreement concerning the merger or consolidation. Said plan shall specify:

(A) The name that such bank or trust company shall have upon and after such merger or consolidation, which may be the name of any one of the institutions or the combined names of two or more of the institutions or such other name as stated;

(B) The persons who shall constitute the board of directors of the bank or trust company after the merger or consolidation;

(C) The manner and basis of converting the shares of each merged or consolidated institution into shares or other securities or obligations of the surviving bank or trust company and, if any shares of any of the merged or consolidated institutions are not to be converted solely into shares or other securities of the surviving bank or trust company, the amount of cash or securities of any other corporation, or combination of cash and such securities, which is to be paid or delivered to the holders of such shares in exchange for or upon the surrender of such shares, which cash or securities may be in addition to or in lieu of the shares or other securities of the surviving bank or trust company; and

(D) Such other provisions with respect to the proposed merger or consolidation as are deemed desirable.

(2) Adoption of the plan by each party thereto shall require the affirmative vote of at least:

(A) A majority of the directors; and

(B) The shareholders entitled to cast two-thirds of the votes which all shareholders are entitled to cast thereon and, if any class of shares is entitled to vote thereon as a class, the holders of at least two-thirds of the outstanding shares of such class, at a meeting of shareholders.

(3) The notice shall include a copy or summary of the plan and a full statement of the rights and remedies of dissenting shareholders, the method of exercising them, and the limitations on such rights and remedies.

(b) Any modification of a plan which has been adopted shall be made by any method provided therein or, in the absence of such provision, by the same vote as that required for adoption. (Ga. L. 1919, p. 135, art. 13, §§ 1, 2; Code 1933, §§ 13-1401, 13-1402; Ga. L. 1973, p. 278, § 1; Code 1933, § 41A-2402, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 192 et seq., 234.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 158-162, 640.

#### **7-1-532. Execution, contents, and filing of articles of merger or consolidation; notice of merger or consolidation; filing amendment.**

(a) Upon adoption of the plan of merger or consolidation as provided in Code Section 7-1-531, the parties to the merger or consolidation shall file in duplicate with the department articles of a merger or consolidation as required by this Code section, together with the fee required by Code Section 7-1-862.

(b) The articles of merger or consolidation shall be signed by two duly authorized officers of each party to the plan under their respective seals and shall contain:

(1) The names of the parties to the plan and of the resulting bank or trust company;

(2) The street address and county of the location of the main office and registered agent and registered office of each;

(3) The votes by which the plan was adopted and the time, place, and notice of each meeting in connection with such adoption;

(4) The names and addresses of the first directors of the resulting bank or trust company;

(5) In the case of a merger, any amendment of the articles of the resulting bank or trust company;



(6) In the case of a consolidation, the provisions required in articles of a new bank or trust company by paragraphs (4), (5), (6), (7), and (10) of subsection (a) of Code Section 7-1-392; and

(7) The plan.

(c) Together with the articles of merger or consolidation, the parties shall deliver to the department a copy of the notice of merger or consolidation and an undertaking, which may appear in the articles of merger or consolidation or be set forth in a letter or other instrument executed by an officer or any person authorized to act on behalf of such bank or trust company, that the request for publication of a notice of filing the articles of merger or consolidation and payment therefor will be made as required by subsection (d) of this Code section.

(d) No later than the next business day after filing the articles of merger or consolidation with the department, the parties shall mail or deliver to the publisher of a newspaper which is the official organ of the county where the main office of each party is located a notice which shall contain a statement that the articles of merger or consolidation have been filed with the department, the names of the institutions which are parties to the proposed merger or consolidation, and the proposed name of the surviving bank or trust company and shall designate a place where a copy of the articles of merger or consolidation may be examined. Subsections (b) and (c) of Code Section 7-1-7 shall also apply to the notice.

(e) The request for publication of the notice shall be accompanied by a check, draft, or money order in the proper amount in payment of the cost of publication. The notice shall be published once a week for two consecutive weeks commencing within ten days after receipt of the notice by the newspaper.

(f) In the event the plan is amended as provided in Code Section 7-1-531, the parties shall promptly file in duplicate with the department an amendment to the articles of consolidation or merger reflecting such amendment of the plan. (Ga. L. 1922, p. 63, § 1; Code 1933, § 13-1403; Ga. L. 1972, p. 727, § 7; Code 1933, § 41A-2403, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 12; Ga. L. 1995, p. 673, § 19; Ga. L. 1998, p. 795, § 24; Ga. L. 1999, p. 81, § 7; Ga. L. 1999, p. 674, § 12.)

### **7-1-533. Additional filings with department.**

The parties to the plan shall also file with the department:

(1) An application and information desired by the department in order to evaluate the proposed merger or consolidation, which shall be made available in the form specified by the department;

(2) Applicable fees established by regulation of the department to defray the expenses of the investigation required by Code Section 7-1-534; and

(3) If the merger or consolidation involves the adoption of a new name, a certificate of the Secretary of State reserving said name under Code Section 7-1-131. (Ga. L. 1919, p. 135, art. 13, §§ 2, 3; Code 1933, § 13-1404; Code 1933, § 41A-2404, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1978, p. 1717, § 6; Ga. L. 1989, p. 1257, § 13; Ga. L. 1995, p. 673, § 20.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 234.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 158-162, 640.

#### 7-1-534. Approval or disapproval by department.

(a) Upon receipt of the articles of consolidation or merger and the filings required by Code Section 7-1-533, the department shall conduct such investigation as it may deem necessary to ascertain whether:

(1) The articles of merger or consolidation and supporting items satisfy the requirements of this chapter;

(2) The plan and any modification thereof adequately protect the interests of depositors, other creditors, and shareholders;

(3) The requirements for a merger or consolidation under all applicable laws have been satisfied and the resulting bank or trust company would satisfy the requirements of this chapter applicable to it; and

(4) The merger or consolidation would be consistent with adequate and sound banking or fiduciary practice and in the public interest on the basis of:

(A) The financial history and condition of the parties to the plan;

(B) Their prospects;

(C) The character of their management; and

(D) The convenience and needs of the area primarily to be served by the resulting institution.

(b) Within 90 days after receipt of the articles of merger or consolidation, the notice of merger, and the filings required by Code Section 7-1-533, or within an additional period of not more than 30 days after an amendment to the application is received within the initial 90 day period, the department shall, in its discretion, approve or disapprove the articles on the basis of its investigation and the criteria set forth in subsection (a) of this Code section. Except as provided in Code Section 7-1-535, the department shall give the Secretary of State written notice of its approval with a copy of the articles of merger or consolidation and a copy of the notice of merger attached. The department shall also give the parties to the

plan written notice of its decision and, in the event of disapproval, a statement in general of the reasons for its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review as provided in Code Section 7-1-90. (Code 1933, § 41A-2405, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 14; Ga. L. 1995, p. 673, § 21; Ga. L. 1996, p. 6, § 7.)

**Cross references.** — Requirement that department approve change in control of financial institutions generally, § 7-1-231.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 234.

#### **7-1-535. Procedure after approval by department; federal approval or disapproval; issuance of certificate of merger or consolidation.**

(a) If the laws of the United States require the approval of the merger or consolidation by any federal agency, the department may, at its option, after its approval, retain its notice to the Secretary of State until it receives notice of the decision of such agency. If such agency shall refuse to give its approval, the department may, at its option, notify the parties to the plan that the department's approval has been rescinded for that reason. If such agency gives its approval, the department shall deliver its written approval to the Secretary of State for issuance of a certificate of merger or consolidation by the Secretary of State and shall notify the parties to the plan.

(b) If all the taxes, fees, and charges required by law shall have been paid and if the name of the resulting bank or trust company continues to be reserved or is available on the records of the Secretary of State, upon receipt of the written approval of the department, the Secretary of State shall issue to the resulting bank or trust company a certificate of merger or consolidation with the approved articles of merger or consolidation attached thereto and shall retain a copy of such certificate, articles, and approval by the department. (Ga. L. 1922, p. 63, § 1; Code 1933, § 13-1403; Ga. L. 1972, p. 727, § 7; Code 1933, § 41A-2406, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1978, p. 1717, § 7.)

#### **7-1-536. Effect of merger or consolidation.**

(a) As of the issuance of the certificate of merger or consolidation by the Secretary of State, the merger or consolidation shall be effective.

(b) The certificate of merger or consolidation shall be conclusive evidence of the performance of all conditions precedent to the merger or consolidation and of the existence or creation of the bank or trust institution, except as against the state.



(c) When a merger or consolidation becomes effective, each party to the plan, except the resulting bank or trust company, shall cease to exist as a separate entity but shall continue in, and the parties to the plan shall be, a single corporation which shall be the bank or trust company and which shall have, without further act or deed, all the property, rights, powers, trusts, duties, and obligations of each party to the plan.

(d) The articles of the resulting bank or trust company shall be, in the case of a merger, the same as its articles prior to the merger with any change stated in the articles of merger or, in the case of a consolidation, the provisions stated in the articles of consolidation.

(e) The resulting bank or trust company shall have the authority to engage only in such business and exercise only such powers as are then permissible upon original incorporation under this chapter and shall be subject to the same prohibitions and limitations as it would then be subject to upon original incorporation. It may, however, subject to permission of the department as set out in Code Sections 7-1-530 and 7-1-555, engage in any business and exercise any right that any bank or trust company which is a party to the plan could lawfully exercise or engage in immediately prior to the merger or consolidation.

(f) No liability of any party to the plan or of its shareholders, directors, or officers shall be affected nor shall any lien on any property of a party to the plan be impaired by the merger or consolidation. Any claim existing or action pending by or against any party to the plan may be prosecuted to judgment as if the merger or consolidation had not taken place or the resulting bank or trust company may be substituted in its place. (Ga. L. 1919, p. 135, art. 13, § 5; Code 1933, §§ 13-1406, 13-1407; Code 1933, § 41A-2407, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2001, p. 970, § 6.)

### JUDICIAL DECISIONS

**Formal transfer not necessary.** — The clear purpose of O.C.G.A. § 7-1-536 is to eliminate the necessity of a formal transfer or assignment of the property of the constituent bank to the consolidated bank. *State Bank & Trust Co. v. Newby*, 170 Ga. App. 865, 318 S.E.2d 738 (1984).

**Assignment of judgment not required.** — Bank into which judgment creditor bank had merged did not have to produce evidence of assignment of judgment prior to instituting garnishment proceeding in its name. *State Bank & Trust Co. v. Newby*, 170 Ga. App. 865, 318 S.E.2d 738 (1984).

**Succession to trusteeship upon merger.** — Where a utility corporation, as settlor, pursu-

ant to former § 53-12-31 created an express trust, the purpose being to secure the corporation's obligation to furnish water and sewerage services to the properties located in a subdivision, and the bank named as trustee merged with another bank under the authority of former §§ 13-1406 and 13-1407, the second bank succeeded by operation of law to the trusteeship upon the merger with the first bank. *Smith v. Hawks*, 182 Ga. App. 379, 355 S.E.2d 669 (1987).

**Cited in** *Georgia R.R. Bank & Trust Co. v. McCullough*, 241 Ga. 456, 246 S.E.2d 313 (1978).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 234.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 158-162, 640.

**ALR.** — Liability of guarantor of or surety for bank deposit as affected by reorganization, merger, or consolidation of bank, 78 ALR 381.

**7-1-537. Rights of dissenting shareholders; surrender of certificates.**

(a) A shareholder of a bank or trust company which is a party to a plan of proposed merger or consolidation under this part who objects to the plan shall be entitled to the rights and remedies of a dissenting shareholder as determined under Chapter 2 of Title 14, known as the "Georgia Business Corporation Code."

(b) The bank or trust company into which the other or others have been merged or consolidated, as the case may be, shall have the right to require the return of the original certificates of stock held by each shareholder in each or either of the institutions and in lieu thereof:

(1) To issue to each shareholder new certificates for such number of shares of the institution into which the others shall have been merged or consolidated; or

(2) To cause to be paid or delivered to each shareholder the amount of cash or securities of any other corporation or combination of cash and such securities as, under the plan of merger or consolidation, the said shareholder may be entitled to receive. (Ga. L. 1919, p. 135, art. 13, §§ 4, 6; Code 1933, § 13-1405; Ga. L. 1973, p. 278, § 2; Code 1933, § 41A-2408, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 946, § 68; Ga. L. 1989, p. 1257, § 15.)

**Editor's notes.** — The amendment to this Code section by Ga. L. 1989, p. 946, § 68, was superseded by the amendment by Ga. L. 1989, p. 1257, § 15, which was enacted later.

**Law reviews.** — For survey article on business associations, see 34 Mercer L. Rev. 13 (1982).

## JUDICIAL DECISIONS

**Former Code Section 14-2-251** (see O.C.G.A. § 14-2-1320 et seq.) and O.C.G.A. § 7-1-537 make no provision for conditional dissent by shareholder to plan or proposed merger. *Baugh v. Citizens & S. Nat'l Bank*, 248 Ga. 180, 281 S.E.2d 531 (1981).

**Corporation's power to impair shareholders' rights differs from state's power over corporations created by it.** — There is a

substantial difference between corporation's attempting to reserve right to impair vested rights of its shareholders through altering or amending its internal structure and retention by state of power to modify or withdraw charters granted to corporations created by the state. *Baugh v. Citizens & S. Nat'l Bank*, 248 Ga. 180, 281 S.E.2d 531 (1981).

RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 195, 198, 238.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 158-162, 640.

**ALR.** — Constitutionality of recent legis-

lation relating to merger, consolidation, or reorganization of banks as affected by rights of dissenting creditors or stockholders, 92 ALR 1337, 96 ALR 1445, 104 ALR 1203.

PART 15

CONVERSIONS, MERGERS, AND CONSOLIDATIONS INVOLVING NATIONAL BANKS

**Cross references.** — Requirement that department approve change in control of financial institutions generally, § 7-1-231.

RESEARCH REFERENCES

**ALR.** — Novation where bank transfers its assets to another bank which assumes its obligation, 79 ALR 82.

Constitutionality of recent legislation relating to merger, consolidation, or reorganization of banks as affected by rights of

dissenting creditors or stockholders, 96 ALR 1445; 104 ALR 1203.

Constitutionality, construction, and application of federal statute relating to power of national bank to engage in trust business, 153 ALR 410.

**7-1-550. Authority for national bank or federal savings bank to state bank or trust company conversions, mergers, and consolidations; conversion, merger, or consolidation across state lines; conversion of federal savings bank to state bank.**

(a) Subject to this part and any applicable branching law or regulation, a national bank located in this state may convert into, or merge or consolidate with, a bank or trust company upon:

(1) Compliance with the applicable laws of the United States, including any provisions thereof relating to approval of said conversion, merger, or consolidation by the shareholders and directors of the national bank and to dissenting rights of shareholders in such national bank;

(2) Adoption of any plan of merger or consolidation by the directors and shareholders of any party thereto existing under the laws of this state as required by paragraph (2) of subsection (a) of Code Section 7-1-531;

(3) Approval of the conversion, merger, or consolidation by the department as provided in this part; and

(4) Issuance of the appropriate certificate by the Secretary of State as provided in this part.

(b) A conversion, merger, or consolidation across state lines of any one or more national banks with a bank or trust company shall also be subject to the provisions of Part 20 of this article.



(c) A federal savings bank located in this state may apply to the department to convert to a state charter. The provisions of Code Section 7-1-293 shall apply to the resulting bank, and the conversion procedure shall be the same as for national bank conversions. (Ga. L. 1953, Jan.-Feb. Sess., p. 73, §§ 3, 4; Code 1933, § 41A-2501, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1982, p. 3, § 7; Ga. L. 1996, p. 848, § 9; Ga. L. 1997, p. 485, § 18; Ga. L. 1999, p. 674, § 13.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, “article” was substituted for “chapter” in subsection (b).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 192 et seq., 234, 238.      **C.J.S.** — 9 C.J.S., Banks and Banking, §§ 495, 570, 571.

#### **7-1-551. National bank to state bank or trust company conversions, mergers, and consolidations — Articles of conversion, merger, or consolidation.**

(a) The party or parties desiring to consummate a conversion, merger, or consolidation authorized by Code Section 7-1-550 shall, upon requisite approval of the plan by their directors and shareholders, file with the department, in triplicate, articles of conversion, merger, or consolidation, together with the fee required by Code Section 7-1-862.

(b) The articles of conversion shall be signed by two duly authorized officers of the national bank under its seal and shall contain:

- (1) Its name and the name of the resulting bank or trust company;
- (2) The street address and county of its main office;
- (3) The name and initial registered agent and the street address where the initial registered office will be located;
- (4) The votes by which the plan of conversion was adopted and the time, place, and notice of each meeting in connection with such adoption;
- (5) The names and addresses of the first directors of the resulting bank or trust company;
- (6) The provisions required in articles of a new bank or trust company by paragraphs (5), (6), (7), and (10) of subsection (a) of Code Section 7-1-392; and
- (7) The plan of conversion.

(c) The articles of merger or consolidation shall be in the form specified by subsection (b) of Code Section 7-1-532. (Ga. L. 1953, Jan.-Feb. Sess., p.

73, §§ 5, 6; Code 1933, § 41A-2502, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 16; Ga. L. 1999, p. 81, § 7; Ga. L. 1999, p. 674, § 14.)

**7-1-552. National bank to state bank or trust company conversions, mergers, and consolidations — Filings with department; publication of notice.**

(a) In the case of a merger or consolidation, the parties shall make the filings and publication required by Code Sections 7-1-532 and 7-1-533.

(b) In the case of a conversion, the national bank shall also file with the department:

(1) Information desired by the department in order to evaluate the proposed conversion, in the form specified by the department;

(2) Applicable fees established by regulation of the department to defray the expenses of its investigation under Code Section 7-1-553; and

(3) A certificate of the Secretary of State showing that the proposed name of the resulting bank or trust company has been reserved under Code Section 7-1-131.

(c) In the case of a conversion, the national bank shall publish, in the manner prescribed by Code Section 7-1-532, a notice of the proposed conversion, setting forth its name and the name it proposes to use as a bank or trust company and designating the place where a copy of the plan of conversion may be examined. The notice shall be published in the county of the main office of the national bank. (Ga. L. 1953, Jan.-Feb. Sess., p. 73, § 9; Code 1933, § 41A-2503, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1995, p. 673, § 22.)

**7-1-553. National bank to state bank or trust company conversions, mergers, and consolidations — Approval or disapproval by department; federal approval or disapproval.**

(a) The department shall conduct such investigation as it may deem necessary to ascertain whether:

(1) In the case of a conversion:

(A) The articles of conversion and supporting items satisfy the requirements of this chapter;

(B) The plan adequately protects the interests of depositors, other than creditors and shareholders; and

(C) The requirements for a conversion under all applicable laws have been satisfied and the resulting institution would satisfy the requirements of this chapter applicable to it; and

(2) In the case of a merger or consolidation, the criteria stated in subsection (a) of Code Section 7-1-534 are satisfied.

(b) Within 90 days after receipt of the articles and the filings required by Code Section 7-1-552, the department shall, in its discretion, approve or disapprove the articles on the basis of its investigation and the criteria set forth in subsection (a) of this Code section. If the department shall approve the articles, it shall deliver its written approval with a copy of the articles attached to the Secretary of State and notify the national bank, and any other parties to the plan, of its action, provided that, if approval of any federal agency is required, the department may withhold, at its option, its approval from the Secretary of State until such federal approval is given. If required federal approval is not given, the department may, at its option, withdraw its approval for this reason. If the department shall disapprove, at its option, the application, it shall give written notice to the national bank and any other parties to the plan of its disapproval and a statement to them generally of the reasons for its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review under Code Section 7-1-90. (Code 1933, § 41A-2504, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1977, p. 730, § 8; Ga. L. 1989, p. 1257, § 17.)

**7-1-554. National bank to state bank or trust company conversions, mergers, and consolidations — Issuance of certificate of conversion, consolidation, or merger.**

If all the taxes, fees, and charges required by law shall have been paid and if the name of the resulting bank or trust company continues to be reserved or is available on the records of the Secretary of State, upon the receipt of the written approval of the department, the Secretary of State shall immediately issue to the resulting bank or trust company a certificate of conversion, consolidation, or merger and shall retain a copy of such certificate, the articles, and the approval from the department. (Ga. L. 1953, Jan.-Feb. Sess., p. 73, § 6; Ga. L. 1972, p. 727, § 6; Code 1933, § 41A-2505, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-555. National bank to state bank or trust company conversions, mergers, and consolidations — Effect of issuance of certificate.**

(a) Issuance of a certificate of merger or consolidation shall have the same effect stated in Code Section 7-1-536.

(b) Issuance of a certificate of conversion shall have the following effect:

(1) As of the issuance of the certificate of conversion by the Secretary of State, the conversion shall become effective;

(2) The certificate of conversion shall be conclusive evidence of the performance of all conditions required by this chapter for conversion of



a national bank into a state bank or trust company, except as against the state;

(3) When a conversion becomes effective, the existence of the national bank shall continue in the resulting bank or trust company which shall have (except as provided in paragraph (2) of this subsection), without further act or deed, all the property, rights, powers, trusts, duties, and obligations of the national bank;

(4) The articles of the resulting institution shall be the provisions stated in the articles of conversion;

(5) The bank or trust company shall have the authority to engage only in such lines of business and activities and exercise only such powers or hold such assets as are then permissible upon original incorporation under this chapter and shall be subject to the same prohibitions and limitations as it would then be subject to upon original incorporation; provided, however, that if the converting institution owns or holds assets, engages in any business, or has powers that would not be allowed for a state bank, then the plan of conversion shall include a plan for holding or disposal of such nonconforming assets or the continuation or termination of such line of business, activity, or power. The department shall review the plan to determine whether, in the interest of safety and soundness and the other objectives of Code Section 7-1-3, the activity, power, asset, or line of business should be approved, denied, or phased out within a reasonable period of time, to be determined by the department; and

(6) No liability of the national bank or of its shareholders, directors, or officers shall be affected, nor shall any lien on any property of the national bank be impaired, by the conversion. Any claim existing or action pending by or against the national bank may be prosecuted to judgment as if the conversion had not taken place, or the resulting bank or trust company may be substituted in its place. (Ga. L. 1953, Jan.-Feb. Sess., p. 73, §§ 7, 12; Code 1933, § 41A-2506, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1998, p. 795, § 25; Ga. L. 2000, p. 174, § 12; Ga. L. 2001, p. 970, § 7.)

#### RESEARCH REFERENCES

**ALR.** — Liability of guarantor of or surety for bank deposit as affected by reorganization, merger, or consolidation of bank, 78 ALR 381.

#### **7-1-556. State bank or trust company to national bank or federal savings institution conversions, mergers, or consolidations.**

(a) A bank or trust company may convert into, or merge or consolidate with, a national bank or a federal savings institution upon:

(1) Authorization by and compliance with the laws of the United States; and

(2) Adoption of a plan of conversion, merger, or consolidation by the affirmative vote of at least:

(A) A majority of its directors; and

(B) The holders of two-thirds of each class of its shares at a meeting held upon not less than ten days' notice to all shareholders.

(b) A state bank or trust company which converts into or merges or consolidates with a national bank or a federal savings institution shall:

(1) Notify the department of the proposed conversion, merger, or consolidation;

(2) Provide such evidence of the adoption of the plan of conversion, merger, or consolidation as the department may request;

(3) Notify the department of any abandonment or disapproval of the plan; and

(4) File with the department and with the Secretary of State a certificate of the approval of the conversion, merger, or consolidation by the appropriate federal regulator.

(c) Conversion, merger, or consolidation of a state institution into a national banking association or a federal savings institution shall be effective upon completion of the requirements in subsection (b) of this Code section, and its articles as an institution existing under the laws of this state shall be automatically terminated. (Code 1933, §§ 13-1305, 13-1306, 13-1307, 13-1308, 13-1309, enacted by Ga. L. 1949, p. 536, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 67, § 1; Code 1933, § 41A-2507, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1999, p. 674, § 15.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 192 et seq., 203, 238.  
**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 495, 570, 571.

#### **7-1-557. Merger or consolidation of nonbank corporations into national banks.**

A national bank located in this state may merge or consolidate with a corporation other than a bank or trust company, provided that:

(1) Such merger or consolidation is permitted by the laws of the United States and such laws are complied with;

(2) The laws governing the merger or consolidation of such corporation are complied with;

(3) The resulting institution is a national bank;

(4) The resulting institution holds only assets and liabilities and engages only in activities which may be held or engaged in by a national bank located in this state; and

(5) The merger or consolidation is not otherwise unlawful. (Code 1933, § 41A-2508, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 192 et seq., 234.

### PART 16

#### SALE AND OTHER DISPOSITION OF ASSETS

#### RESEARCH REFERENCES

**ALR.** — Character as holder in due course of bank which takes over assets and assumes liabilities of another bank, 76 ALR 1329.

#### **7-1-570. Secured transactions and other dispositions of assets not requiring shareholder approval.**

(a) Unless the articles or bylaws otherwise provide, the board of directors may authorize any of the following transactions without any vote or consent of the shareholders:

(1) Any mortgage or pledge of, or creation of a security interest in, or conveyance of title to, all or any part of the property and assets of the bank or trust company of any description, or any interest therein, for the purpose of securing the payment or performance of any contract, note, bond, or other obligation of the bank or trust company; or

(2) Any sale, lease, exchange, or other disposition of less than substantially all the property and assets of the bank or trust company.

(b) Any transaction made as permitted by this Code section without any vote or consent of the shareholders may be upon such terms and conditions and for such consideration as the board may deem to be in the best interests of the bank or trust company. (Code 1933, § 41A-2601, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 19 Am. Jur. 2d, Corporations, § 2667.

**C.J.S.** — 19 C.J.S., Corporations, §§ 217-292.



**7-1-571. Sale, lease, exchange, or other disposition of assets requiring shareholder approval.**

A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a bank or trust company, in all cases other than those dealt with in Code Section 7-1-570, regarding secured transactions, may be made upon such terms and conditions which are otherwise legal and which shall be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition, specifying, to the extent that the board sees fit, any or all of the terms and conditions thereof and the consideration to be received by the bank or trust company therefor and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting;

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, in the manner provided in Code Section 7-1-6, and, whether the meeting is an annual or a special meeting, shall state that the purpose, or one of the purposes, is to consider the proposed sale, lease, exchange, or other disposition. The notice shall fairly summarize the material features of the proposed transaction and shall contain, where applicable, a clear and concise statement that, if the sale, lease, exchange, or other disposition is effected, shareholders may claim the rights of dissenting shareholders under this chapter;

(3) At such meeting the shareholders may authorize such sale, lease, exchange, or other disposition and may approve or fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the bank or trust company therefor. Such authorization shall require the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares shall be entitled to vote as a class if the resolution proposing the sale, lease, exchange, or other disposition contains any provision which, if contained in a proposed amendment to the articles, would entitle such class of shares to vote as a class;

(4) If the shareholders approve the proposed sale or other disposition, the bank or trust company shall make application to the department for approval thereof in such form as may be specified by the department. The department shall, in its discretion, approve the sale or other disposition if the proposal is in conformity with law and if the interests of

the public, depositors, trust beneficiaries, and other creditors of the bank or trust company are adequately protected;

(5) After such authorization by a vote of shareholders and by the department, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders;

(6) In the case of a sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a bank or trust company, a notice shall be published in each county in which the bank or trust company has an office engaged in the banking or trust business in the manner prescribed by subsection (c) of Code Section 7-1-552. (Code 1933, § 41A-2602, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 19 Am. Jur. 2d, Corporations, § 2659. **C.J.S.** — 19 C.J.S., Corporations, §§ 217-292.

#### 7-1-572. Right of shareholder to dissent.

A shareholder of a bank or trust company shall have the right to dissent from any sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a bank or trust company pursuant to Code Section 7-1-571, except for a sale wholly for cash where the shareholders' approval thereof is conditional upon the distribution of all, or substantially all, of the net proceeds of the sale to the shareholders in accordance with their respective interests within one year after the date of the sale. The shareholders' right of dissent shall be exercised as provided in Chapter 2 of Title 14, known as the "Georgia Business Corporation Code." (Code 1933, § 41A-2603, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 946, § 69; Ga. L. 1989, p. 1257, § 18.)

**Editor's notes.** — The amendment to this Code section by Ga. L. 1989, p. 946, § 69, was superseded by the amendment by Ga. L. 1989, p. 1257, § 18, which was enacted later.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 195, 198, 238. **C.J.S.** — 18 C.J.S., Corporations, §§ 344-351.

### PART 17

#### REPRESENTATIVE OFFICES AND REGISTRATION

**Editor's notes.** — Ga. L. 1995, p. 673, effective July 1, 1995, repealed the Code section formerly codified at this part and enacted the current part. The former part consisted of Code Section 7-1-590 and was based on Ga. L. 1981, Ex. Sess., p. 8 (Code

enactment Act) and Ga. L. 1985, p. 246, § 1; Ga. L. 1986, p. 458, § 7; Ga. L. 1987, p. 3, § 7.

**Administrative rules and regulations.** — Applications, registrations and notifications,

Official Compilation of Rules and Regulations of State of Georgia, Department of Banking and Finance, Banks, Chapter 80-1-1.

### 7-1-590. Definitions.

As used in this part, the term:

(1) “Bank” and “bank holding company” shall have the same meaning as in Part 18 of this article. A “banking business” is the business which a bank is authorized to do pursuant to this title. The power to receive deposits or the performance of any transaction directly or through an affiliate or agent relative to a deposit account shall be presumed to constitute a banking business.

(2) “Domicile” means the home state as defined in paragraph (12) of Code Section 7-1-621 where a bank is chartered or where a bank holding company is incorporated.

(3) “Loan production office” is a form of a representative office, where the solicitation of loans or of leases of personal property may occur, but not the disbursement of loan proceeds nor any other banking business. It shall be established and registered as a representative office.

(4) “Representative office” is an office established by a bank, a bank holding company, or an agent or subsidiary of either for the purpose of conducting other than a banking business. It shall not be considered to be a branch office or main office.

(5) “Trust production office” means a trust sales office of a qualifying individual or corporate fiduciary which office is not performing fiduciary activities. The trust institution desiring to establish such an office in this state must apply to the department on forms provided by the department, must be approved by the commissioner to engage in sales activities in this state, and must register and pay any fees required for a representative office under Code Section 7-1-593. Sales activities shall consist primarily of marketing or soliciting in this state using mail, telephone, or electronic means or in person to act or propose to act as a fiduciary outside of this state. The department shall be permitted to examine such trust production offices to ascertain whether they are limiting their activities as prescribed. (Code 1981, § 7-1-590, enacted by Ga. L. 1995, p. 673, § 23; Ga. L. 1997, p. 485, § 19; Ga. L. 1999, p. 674, § 16.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1997, “means” was substituted for “shall mean” in the first sentence in paragraph (5).



**7-1-591. Establishment of representative office by bank or bank holding company domiciled in state.**

A bank domiciled in this state and operating under its laws or the laws of the United States or a subsidiary or agent of such bank may establish a representative office anywhere in the state. A bank holding company domiciled in this state and operating under its laws or the laws of the United States or a nonbank subsidiary or agent of such bank holding company may establish a representative office anywhere in this state. (Code 1981, § 7-1-591, enacted by Ga. L. 1995, p. 673, § 23; Ga. L. 1999, p. 674, § 16.)

**Cross references.** — Requirement of maintenance of registered office by financial institutions in state, § 7-1-132.

**7-1-592. Establishment of representative office by bank or holding company domiciled outside of state.**

A bank or bank holding company domiciled outside this state and operating under the laws of such other state or territory or of the United States, or its subsidiary or agent, may establish representative offices anywhere in this state. (Code 1981, § 7-1-592, enacted by Ga. L. 1995, p. 673, § 23; Ga. L. 1999, p. 674, § 16.)

**Cross references.** — Requirement of maintenance of registered office by financial institutions in state, § 7-1-132.

**RESEARCH REFERENCES**

**ALR.** — In personam jurisdiction under long-arm statute of nonresident banking institution, 9 ALR4th 661.

**7-1-593. Registration of bank or bank holding company having representative office in state.**

(a) A bank or bank holding company having a representative office located in this state shall register with the department annually on forms prescribed by the department. Such registration shall be filed according to regulations issued by the department, shall be accompanied by a registration fee prescribed by regulations of the department, and shall list the names of all its Georgia representative offices, the street address of the offices, the nature of the business to be transacted in or through the offices, and such other information as the department may require. The department may consolidate these requirements and those for agency relationships with the holding company registration required in Parts 18, 19, and 20 of this article.

(b) The department may review the operations of any representative office annually or at such greater frequency as it deems necessary to assure that the office does not transact a banking business. (Code 1981, § 7-1-593, enacted by Ga. L. 1995, p. 673, § 23; Ga. L. 1999, p. 674, § 16.)

**7-1-594. Registration of banks or bank holding companies conducting agency relationships.**

(a) Banks or bank holding companies which are conducting agency relationships must register with the department to ensure the orderly and safe transaction of the banking business and to protect the interest of the state's depositors and creditors. Each such bank or bank holding company shall register with the department on forms prescribed by the department, shall file according to regulations issued by the department, may be subject to a registration fee prescribed by regulations of the department, and shall provide the name of the agent, the street address and activities of the agent, a copy of the agency agreement, and such other information as the department may require.

(b) An agency relationship as defined in paragraph (1.5) of Code Section 7-1-4 must be on terms consistent with safe and sound banking practices and protection of the consumers of this state. The department may review and, where lawful, regulate the operations of any agency relationship to ensure such compliance. An agency relationship must be reflected in a written agreement which provides for orderly resolution of customer complaints, record keeping, liability of the respective parties in the agency relationship, conformity to applicable principal-agent, banking, and other state law, and disclosure to the customer of all pertinent information. (Code 1981, § 7-1-594, enacted by Ga. L. 1995, p. 673, § 23.)

**PART 18**

**BANK BRANCHES, OFFICES, FACILITIES, AND HOLDING COMPANIES**

**Administrative rules and regulations.** — Applications, registrations, and notifications, generally, Official Compilation of Rules and Regulations of State of Georgia, Department of Banking and Finance, Banks, Chapter 80-1-1.

Rules governing bank holding companies, Official Compilation of Rules and Regulations of State of Georgia, Rules of Department of Banking and Finance, Chapter 80-6-1.

**7-1-600. Definitions.**

As used in this part, the term:

(1) "Bank" means any moneyed corporation authorized by law to receive deposits of money and commercial paper, to make loans, to discount bills, notes, and other commercial paper, to buy and sell bills of exchange, and to issue bills, notes, acceptances, or other evidences of

debt, and shall include incorporated banks, savings banks, banking companies, trust companies, and other corporations doing a banking business and may include corporations who provide some or all of the financial services listed in this paragraph by technological means in lieu of or in addition to traditional geographically based delivery systems but, unless the context otherwise indicates, shall not include national banks or building and loan associations or similar associations or corporations; provided, however, that Code Sections 7-1-590 through 7-1-594, providing for the registration of representative offices; Code Sections 7-1-601 and 7-1-602, regulating the operation and establishment of bank branch offices; Code Section 7-1-603, regulating the expansion of existing facilities; and Code Sections 7-1-604 through 7-1-608, restricting the acquisition and ownership of bank shares or assets and regulating the operation of banks and bank holding companies in this state, shall apply to national banks and all other persons, corporations, or associations, by whatever authority organized, doing a banking or trust business in this state. "Bank" shall include "main office" and any "branch office," unless the context indicates that it does not.

(2) "Bank holding company" means "bank holding company" as defined in Code Section 7-1-605.

(3) "Banking office" or "banking location" means either a main office or a branch office.

(4) "Banking services" shall include all those offerings or services resulting from the exercise of banking powers as granted to banks in this title or by other applicable federal or state law or regulation.

(5) "Branch office" means any location of a bank other than the main office where banking services are offered to the public. It does not include a representative office as defined in Code Section 7-1-590 or a bank extension as defined in Code Section 7-1-603. The department may provide by regulation that certain other activities do or do not constitute the formation of a branch office.

(6) "Main office" means the principal banking location of a bank as such location appears in the records of the department. A bank shall indicate its principal banking location with the department, and if it fails to do so, the department shall choose a banking location of such bank to be the main office and shall so notify such bank. (Ga. L. 1919, p. 135, art. 1, § 1; Ga. L. 1925, p. 119, § 1; Ga. L. 1927, p. 195, § 1; Code 1933, § 13-201; Ga. L. 1960, p. 67, § 2; Code 1933, § 13-201.1, enacted by Ga. L. 1960, p. 67, § 3; Ga. L. 1963, p. 602, § 1; Ga. L. 1970, p. 954, § 2; Ga. L. 1976, p. 168, § 1; Ga. L. 1986, p. 458, § 8; Ga. L. 1996, p. 6, § 7; Ga. L. 1997, p. 485, § 20; Ga. L. 1999, p. 674, § 17.)

**Cross references.** — Applicability of to definitions of "bank" and "branch" in "bank office" and "bank facility" definitions the UCC, § 11-1-201(4).



**Law reviews.** — For annual survey of law of business associations, see 43 Mercer L. Rev. 85 (1991).

### JUDICIAL DECISIONS

**Authority to operate branch banks, construed with §§ 7-1-602 and 7-1-606.** — Although a bank holding company may change the corporate structure of its banking subsidiaries through merger, consolidation, or purchase, and may continue all of the banking activities of the component banks, a bank holding company may not, through its banking subsidiary, acquire "branch banks" and continue to operate them as such. *First Nat'l Bank of Commerce v. Community Bankers Ass'n*, 260 Ga. 371, 394 S.E.2d 95 (1990).

**Drive-in facilities.** — A drive-in window would ordinarily fit within definition of bank facility. *Jackson v. First Nat'l Bank*, 349 F.2d 71 (5th Cir. 1965).

A drive-in facility clearly comes within the Georgia definition of a bank facility. *Jackson v. First Nat'l Bank*, 246 F. Supp. 134 (M.D. Ga. 1965).

**Cited in** *Jackson v. First Nat'l Bank*, 292 F. Supp. 156 (N.D. Ga. 1968); *Independent Bankers Ass'n v. Dunn*, 230 Ga. 345, 197 S.E.2d 129 (1973).

### OPINIONS OF THE ATTORNEY GENERAL

**A mobile check cashing service** would come under jurisdiction of State Banking Department. 1967 Op. Att'y Gen. No. 67-286.

**Production Credit Associations are not banks**, and statutes applicable to taxation of banks do not apply to Production Credit Associations located in the State of Georgia. 1957 Op. Att'y Gen. p. 312.

**Public funds held by county officials may not be deposited in savings and loan associations.** — Public funds held by county officials must be deposited in one or more solvent banks and may not be deposited in savings and loan associations. 1974 Op. Att'y Gen. No. 74-145.

**When loan production office is a place of business under this section.** — When a loan production office performs all competitive and service-related functions in soliciting

and servicing loans, it clearly is a place of business within meaning of former Code 1933, § 13-201.1 (see O.C.G.A. § 7-1-600). 1974 Op. Att'y Gen. No. 74-12.

**Classification of formerly established branch bank located in same county as principal office.** — A place of banking business which is located within the county in which is located the principal office of the bank, and which was formerly a lawfully established branch bank within the meaning of former Code 1933, § 13-201.1 (see O.C.G.A. § 7-1-600(5)), is for purposes of former Code 1933, §§ 13-203 and 13-203.1 (see O.C.G.A. §§ 7-1-601 and 7-1-602) to be treated as a bank office as defined by former Code 1933, § 13-201.1 (see O.C.G.A. § 7-1-600(4)). 1974 Op. Att'y Gen. No. 74-35.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 630 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 45, 46.

### 7-1-601. Branch offices.

(a) Branch offices may be established by banks doing a lawful banking business in Georgia with the prior approval of the department as follows:

(1) New or additional branch offices may be established de novo in the manner provided in Code Section 7-1-602;

(2) New or additional branch offices may be established through merger, consolidation, or sale of assets pursuant to Part 14, 15, 16, 19, or 20 of this article;

(3) A bank may acquire a branch office from another bank without acquisition of the entire bank. However, an out-of-state bank with no lawfully established branch office in Georgia may not directly or indirectly make such an acquisition; or

(4) A bank with two or more existing banking offices in Georgia may redesignate its existing main office as a branch office in accordance with the procedures established by the department.

(b) A bank not doing a lawful banking business in Georgia may become the owner of a branch office in Georgia provided such transaction is consummated under Section 12 or 13 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1811, et seq., as amended.

(c) Taxation of all banks shall be in the manner provided in Chapter 6 of Title 48.

(d) Each branch office will operate under the control and direction of the board of directors and executive officers of the bank, and the bank shall be responsible for adequately staffing the branch office to conduct the business of the branch office in accordance with this chapter, federal law, and the rules and regulations of the department. (Ga. L. 1919, p. 135, art. 1, § 3; Ga. L. 1920, p. 102, § 1; Ga. L. 1927, p. 195, § 1; Code 1933, § 13-203; Ga. L. 1960, p. 67, § 4; Ga. L. 1970, p. 954, § 3; Ga. L. 1975, p. 474, § 1; Ga. L. 1978, p. 1710, § 1; Ga. L. 1987, p. 1586, § 9; Ga. L. 1996, p. 181, § 9; Ga. L. 1996, p. 642, §§ 1, 2; Ga. L. 1996, p. 848, § 10; Ga. L. 1999, p. 674, § 17.)

**Cross references.** — Status of branch or separate office of bank for purpose of computing time within which and determining place at or to which action may be taken or notices or orders given under Art. 4, T. 11, the "Commercial Code," § 11-4-106.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1999, "Part" was substituted for "Parts" in paragraph (a)(2).

**Law reviews.** — For article discussing compliance with Federal Securities Act of 1933 in

bank acquisitions and the issuance of securities of bank holding companies, see 14 Ga. St. B.J. 114 (1978).

For review of 1996 banking and finance legislation, see 13 Ga. St. U. L. Rev. 1 (1996). For review of 1996 revenue and taxation legislation, see 13 Ga. U. L. Rev. 294 (1996).

For comment on *United States v. Citizens & S. Nat'l Bank*, 422 U.S. 86, 95 S. Ct. 2099, 45 L. Ed. 2d 41 (1975), see 10 Ga. L. Rev. 641 (1976).

## JUDICIAL DECISIONS

**"Branch bank" not necessarily interchangeable with "bank".** — The term

"branch bank" is not necessarily interchangeable with "bank." *Community Bank-*

ers Ass'n v. First Nat'l Bank of Commerce, 193 Ga. App. 569, 388 S.E.2d 387 (1989), aff'd, 260 Ga. 371, 394 S.E.2d 95 (1990).

**Merger with branch not approved without merging entire bank.** — Nothing in the Code expresses or implies any intent to permit approval of a bank holding company's merging or consolidating with, or acquiring control of, a branch bank by itself without merging or consolidating with, or acquiring control of, the entire bank. Community Bankers Ass'n v. First Nat'l Bank of Commerce, 193 Ga. App. 569, 388 S.E.2d 387 (1989), aff'd, 260 Ga. 371, 394 S.E.2d 95 (1990).

**Using sister subsidiary of holding company which controls bank.** — Fact that branch banking activities prohibited under former Code 1933, § 13-203 (see O.C.G.A. § 7-1-601) are performed by sister subsidiary of holding company controlling the bank does not make such activities legal, as such a contractual arrangement merely accomplishes indirectly what the bank is prohibited from doing directly. Jackson v. First Nat'l Bank, 430 F.2d 1200 (5th Cir. 1970), cert. denied, 401 U.S. 947, 28 L. Ed. 2d 230, 91 S. Ct. 933 (1971), cert. denied, 401 U.S. 947, 91 S. Ct. 933, 28 L. Ed. 2d 230 (1971).

**Georgia banks may not use armored cars to extend geographic reach of their banking**

**facility.** Jackson v. First Nat'l Bank, 430 F.2d 1200 (5th Cir. 1970), cert. denied, 401 U.S. 947, 91 S. Ct. 933, 28 L. Ed. 2d 230 (1971).

**Use of armored cars constituting branch banking.** — Operation of armored truck bank messenger service of national bank, whose function is to transmit funds to bank, make change, transmit funds from bank, and furnish teller service for payroll cashing, constitutes operation of branch bank within meaning of former Code 1933, § 13-203 (see O.C.G.A. § 7-1-601). Jackson v. First Nat'l Bank, 292 F. Supp. 156 (N.D. Ga. 1968), aff'd, 430 F.2d 1200 (5th Cir. 1970), cert. denied, 401 U.S. 947, 91 S. Ct. 933, 28 L. Ed. 230 (1971).

Armored cars owned by bank, which picked up deposits, were engaged in branch banking, even though depositors using services offered by the armored cars entered into contract with bank that deposits delivered to armored car would not be deemed received until they were physically delivered into hands of teller on bank's premises. Jackson v. First Nat'l Bank, 430 F.2d 1200 (5th Cir. 1970), cert. denied, 401 U.S. 947, 91 S. Ct. 933, 28 L. Ed. 2d 230 (1971).

**Cited in** Goodwin v. Citizens & S. Nat'l Bank, 209 Ga. 908, 76 S.E.2d 620 (1953); Jackson v. First Nat'l Bank, 246 F. Supp. 134 (M.D. Ga. 1965).

## OPINIONS OF THE ATTORNEY GENERAL

**Former Code 1933, § 13-203 (see O.C.G.A. § 7-1-601) was constitutional.** 1948-49 Op. Att'y Gen. p. 4.

**Legislative intent behind former Code 1933, § 13-203 (see O.C.G.A. § 7-1-601) was to prohibit establishment of new and additional branch banks.** 1971 Op. Att'y Gen. No. 71-102.

**Branch banking and bank holding company restrictions apply to bank facilities conducting only trust business.** 1980 Op. Att'y Gen. No. 80-156.

**Mortgage banking and factoring subsidiaries are nonbanking activities** and are not included in former Code 1933, § 13-203 (see O.C.G.A. § 7-1-601) which restricts branch banking. 1972 Op. Att'y Gen. No. 72-131.

**Former Code 1933, § 13-203 (see O.C.G.A. § 7-1-601) restrictions inapplicable to establishment of foreign branch office**

**of state-chartered trust company.** 1970 Op. Att'y Gen. No. 70-59.

**State trust company not prohibited from establishing foreign branch office to develop new international business.** 1970 Op. Att'y Gen. No. 70-59.

**Mere change in physical location of branch bank is not establishment of such a bank.** 1958-59 Op. Att'y Gen. p. 17.

**Operation of savings and loan across county lines.** — The only branch of a savings and loan association located in the county affected, which is lawfully controlled by a bank holding company or as to which the bank holding company has received the requisite approvals to acquire control, may be lawfully acquired by a banking subsidiary of a bank holding company through a purchase and assumption and operated across county lines as a branch of the banking subsidiary; provided, such acquisition is ap-



proved by the commissioner of banking and finance. 1988 Op. Att'y Gen. No. 88-13.

**Merger of holding company's subsidiaries across county lines.** — With respect to circumstances under which a bank holding company may merge two subsidiaries across county lines, there are two requirements: (1) the commissioner must approve, and (2) merger must take place at time holding company acquires bank which is to become a branch bank following merger. 1981 Op. Att'y Gen. No. 81-74.

**Controlling geographical entity is the county.** — For purpose of determining whether parent office of national bank established on military reservation may establish a branch bank, the controlling geographical entity is the county, not the military reservation. 1975 Op. Att'y Gen. No. 75-141.

**Exemption to subsection (c) under § 7-1-606(e).** — It seems clear that O.C.G.A. § 7-1-606(e) creates at least a limited exception to the branching prohibition of O.C.G.A. § 7-1-601(c) of this section. 1981 Op. Att'y Gen. No. 81-74.

**Parent bank directors must elect board of directors for branch bank.** — Where parent bank establishes a branch bank, directors of parent bank are required to elect either a board of directors or a loan committee for the branch bank. 1954-56 Op. Att'y Gen. p. 35.

**Classification of formerly established branch bank located in same county as principal office.** — A place of banking business which is located within the county in which is located the principal office of the bank, and which was formerly a lawfully established branch bank within the meaning of former Code 1933, § 13-201.1 (see O.C.G.A. § 7-1-600(5)) is for purposes of former Code 1933, §§ 13-203 and 13-203.1 (see O.C.G.A. §§ 7-1-601 and 7-1-602) to be treated as a bank office as defined by former Code 1933, § 13-201.1 (see O.C.G.A. § 7-1-600(4)). 1974 Op. Att'y Gen. No. 74-35.

**Finding of de facto branching not dependent upon finding that intermediary corporation is a sham and does no business on its own account.** 1980 Op. Att'y Gen. No. 80-51.

**Brokerage firm, in jointly operating an investment program, is not a branch.** — Where a brokerage firm, in operating an investment program in conjunction with a bank, is performing its functions primarily for its own benefit, it is in no sense a mere adjunct of the participating bank, and the program does not result in the operation of branches, offices, or facilities by the participating bank in violation of O.C.G.A. §§ 7-1-601 and 7-1-602. 1981 Op. Att'y Gen. No. 81-59.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 630 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 21, 45, 46.

**ALR.** — Power of national bank to establish branches or maintain separate banking offices, 30 ALR 927; 50 ALR 1340; 136 ALR 471.

Branch banks, 50 ALR 1340; 136 ALR 471.

Liability of guarantor of or surety for bank deposit as affected by reorganization, merger, or consolidation of bank, 78 ALR 381.

What is a "branch bank" within statutes regulating the establishment of branch banks, 23 ALR3d 683.

## 7-1-602. Applications for branch offices.

(a) Application to establish a branch office shall be made to the department in such form as it may prescribe from time to time. The department shall exercise its discretion in its consideration of the application; but the department shall not approve the application until it has ascertained to its satisfaction that the public need and advantage will be promoted by the establishment of the proposed branch office, based upon the following factors:

(1) Reasonable opportunity for the proposed branch office to generate a sufficient profit;

(2) The character and fitness of the board of directors and management of the bank to command the confidence of the community and to warrant the belief that the business of the bank or trust company at the branch office will be honestly and efficiently conducted;

(3) The adequacy of the capital structure of the bank or trust company, particularly in view of the anticipated business to be generated by the proposed branch office; and

(4) The overall financial condition and safety and soundness of the applicant bank or trust company.

Where the department by rule, regulation, or written policy has provided for expedited processing of applications or for notice procedures, it may abbreviate its review of these criteria.

(b) After receipt of a complete application, the department shall have 90 days within which to approve or disapprove such application. Under normal circumstances and workload, the department will issue an approval or disapproval of a branch office within 21 days or after the end of the public comment period, whichever is later.

(c) The department may approve an application contingent upon the satisfaction of additional conditions including the submission of information such as the date of opening and the capital outlay for the branch office. If the approval of a federal regulatory agency is required with respect to the branch office, the department may at its option withhold its written approval or disapproval until such federal approval is granted or denied or may withdraw its approval if the federal agency fails to act or refuses to grant approval. If the department disapproves the branch office, it shall notify the applicant of its disapproval and state generally in writing the unfavorable factors influencing its decision. The decision of the department is final, except that it may be subject to judicial review as provided in Code Section 7-1-90.

(d) The department may provide by regulation that a bank which meets certain financial and managerial criteria may, in lieu of application, file a written notification with the department at a time to be specified in such regulation. The department may waive publication requirements for such a procedure.

(e) All lawfully established banking locations existing on July 1, 1999, other than a bank's main office, shall be known and shall qualify as branch offices.

(f) In the event of merger or consolidation of two or more banks, pursuant to Parts 14 and 15 of this article, the surviving or resulting bank

shall designate a main office and may retain and continue to operate any or all banking locations of each constituent bank as branch offices so long as they are consistent with and authorized by this part. In the event of the purchase of substantially all of the assets of a bank, subject to the review and approval by the commissioner of such transaction, the purchasing bank may retain and continue to operate any or all banking locations of the selling bank as branch offices so long as they are consistent with and authorized by this part.

(g) The department's approval may be revoked if conditions in the approval have not been satisfied or if other violations of law occur as a result of the branch office's opening or operation. (Code 1933, § 13-203.1, enacted by Ga. L. 1960, p. 67, § 5; Ga. L. 1963, p. 602, § 2; Ga. L. 1970, p. 954, § 4; Ga. L. 1973, p. 127, § 1; Ga. L. 1975, p. 473, § 1; Ga. L. 1978, p. 1710, § 3; Ga. L. 1978, p. 2068, § 1; Ga. L. 1980, p. 1082, § 1; Ga. L. 1983, p. 602, § 14; Ga. L. 1999, p. 674, § 17; Ga. L. 2000, p. 174, § 13.)

**Law reviews.** — For article discussing compliance with Federal Securities Act of 1933 in bank acquisitions and the issuance of securities of bank holding companies, see 14 Ga. St. B.J. 114 (1978). For annual survey of law of business associations, see 43 Mercer L. Rev. 85 (1991).

For comment on *United States v. Citizens & S. Nat'l Bank*, 422 U.S. 86, 95 S. Ct. 2099, 45 L. Ed. 2d 41 (1975), see 10 Ga. L. Rev. 641 (1976).

## JUDICIAL DECISIONS

**"Branch bank" not necessarily interchangeable with "bank".** — The term "branch bank", as used in O.C.G.A. § 7-1-602(e), is not necessarily interchangeable with "bank." *Community Bankers Ass'n v. First Nat'l Bank of Commerce*, 193 Ga. App. 569, 388 S.E.2d 387 (1989), *aff'd*, 260 Ga. 371, 394 S.E.2d 95 (1990).

**Pertinent criteria in determining whether bank facility is a branch office.** — To determine whether a bank facility is a branch office, the court should look to four pertinent factual criteria; i.e., distance separating main banking house and the facility, number of intervening structures, lack of physical connection between main banking house and the facility, and, economic effect of facility on balance of competition between area banks. *Dunn v. First Nat'l Bank*, 345 F. Supp. 853 (N.D. Ga. 1972).

**Acquisition and operation of branch banks by holding company's subsidiary.** — Although a bank holding company may change the corporate structure of its banking subsidiaries through merger, consolidation, or purchase, and may continue all of

the banking activities of the component banks, a bank holding company may not, through its banking subsidiary, acquire "branch banks" and continue to operate them as such. *First Nat'l Bank of Commerce v. Community Bankers Ass'n*, 260 Ga. 371, 394 S.E.2d 95 (1990).

**Merger with branch not approved without merging entire bank.** — Nothing in the Code expresses or implies any intent to permit approval of a bank holding company's merging or consolidating with, or acquiring control of, a branch bank by itself without merging or consolidating with, or acquiring control of, the entire bank. *Community Bankers Ass'n v. First Nat'l Bank of Commerce*, 193 Ga. App. 569, 388 S.E.2d 387 (1989), *aff'd*, 260 Ga. 371, 394 S.E.2d 95 (1990).

**Cited in** *Jackson v. First Nat'l Bank*, 246 F. Supp. 134 (M.D. Ga. 1965); *Jackson v. First Nat'l Bank*, 292 F. Supp. 156 (N.D. Ga. 1968); *United States v. Citizens & S. Nat'l Bank*, 422 U.S. 86, 95 S. Ct. 2099, 45 L. Ed. 2d 41 (1975).



### OPINIONS OF THE ATTORNEY GENERAL

**Legislative intent behind former Code 1933, § 13-203.1** (see O.C.G.A. § 7-1-602) was to provide for establishment and operation of new and additional bank offices and bank facilities. 1971 Op. Att'y Gen. No. 71-102.

**Section empowers commissioner to regulate establishment of bank offices and facilities.** — Former Code 1933, § 13-203.1 (see O.C.G.A. § 7-1-602) empowered superintendent of banks, (now commissioner of banking and finance), to regulate establishment of bank offices and bank facilities and to provide for criteria of examination and determination of public need and advantage in establishment of bank offices and bank facilities. 1971 Op. Att'y Gen. No. 71-102.

**Establishment of multiple bank offices through use of mobile bank unit.** — Georgia law does not prohibit a bank from establishing multiple bank offices or bank facilities, using a single mobile bank unit on a regular part-time basis. 1976 Op. Att'y Gen. No. 76-106.

**In applying section, controlling geographical entity is the county.** — For purpose of applying state law to parent office of national bank established on military reservation, the controlling geographical entity is the county, not the military reservation. 1975 Op. Att'y Gen. No. 75-141.

**Parent office located on military reservation may operate office off reservation.** —

Where two national banks whose parent banks are located in one county each have a branch bank in another county, even though it is on a military reservation, they may establish and operate additional offices in that first county off the military reservation. 1975 Op. Att'y Gen. No. 75-141.

**Classification of formerly established branch bank.** — A place of banking business which is located within the county in which is located the principal office of the bank, and which was formerly a lawfully established branch bank within the meaning of former Code 1933, § 13-201.1 (see O.C.G.A. § 7-1-600(5)), is for purposes of former Code 1933, §§ 13-203 and 13-203.1 (see O.C.G.A. §§ 7-1-601 and 7-1-602) to be treated as a bank office as defined by former Code 1933, § 13-201.1 (see O.C.G.A. § 7-1-600(4)). 1974 Op. Att'y Gen. No. 74-35.

**Brokerage firm, in jointly operating an investment program, is not a branch.** — Where a brokerage firm, in operating an investment program in conjunction with a bank, is performing its functions primarily for its own benefit, it is in no sense a mere adjunct of the participating bank, and the program does not result in the operation of branches, offices, or facilities by the participating bank in violation of O.C.G.A. §§ 7-1-601 and 7-1-602. 1981 Op. Att'y Gen. No. 81-59.

### RESEARCH REFERENCES

**ALR.** — Power of banking corporation to loan money for others, 33 ALR 597.  
Branch banks, 50 ALR 1340; 136 ALR 471.

What is a "branch bank" within statutes regulating the establishment of branch banks, 23 ALR3d 683.

### 7-1-603. Extension of existing banking locations; automated teller machines, cash dispensing machines, point-of-sale terminals, and other extensions.

(a) An approved banking location may have an extension, which is not a branch or main office, at which banking activities may occur. The extensions described in this Code section do not require approval but may have certain restrictions or required notifications.

(b) The following are extensions:

(1) "Automated teller machine" means electronic equipment which performs routine banking transactions including, but not limited to, the taking of deposits for the public at locations off premises of a bank's main or branch office under regulations prescribed by the commissioner.

(2) "Cash dispensing machine" means for the purposes of this part and as used in paragraph (4) of subsection (b) of Code Section 7-1-241 an automated or electronic terminal which dispenses cash or scrip redeemable for goods and services or for cash, goods, and services. Such machines may provide account information but may not initiate intrabank transactions other than those necessary and incidental to the dispensing of cash.

(3) "Point-of-sale terminal" means electronic equipment located in nonbank business outlets to record electronically with a bank transactions occurring as a result of the sale of goods or services.

For purposes of this Code section, the terms "automated teller machine," "point-of-sale terminal," and "cash dispensing machine" shall not include personal communication devices such as telephones, computer terminals, modems, and other similar devices which are not accessible to the general public but are intended for use by a single bank customer. It is not the intent of this Code section to limit the ability of banks or other entities to utilize personal communication devices. The department may by regulation further define "automated teller machine," "point-of-sale terminal," "cash dispensing machine," and "personal communication device" consistent with the objectives set forth in Code Section 7-1-3.

(c) The following are restrictions on location of an extension:

(1) Any Georgia state bank or credit union may operate automated teller machines throughout the state. Any bank not otherwise doing a lawful banking business in this state may operate automated teller machines throughout this state, provided such automated teller machines are unstaffed and not combined with a staffed facility. These machines may be operated individually by any bank or jointly on a cost-sharing basis by two or more banks or other financial institutions;

(2) Any bank may operate cash dispensing machines throughout the state. Access to and use of cash dispensing machines may be available to all banks in this state on an individual or a shared basis; and

(3) A point-of-sale terminal may be located anywhere in the state.

(d) An extension not defined in subsection (b) is permitted, provided such extension is located within the boundary lines of a single contiguous area of property owned or leased by the bank and used as a banking location, or if it is within 200 yards of such a banking location. Banking services may be performed at the extension. Written notification to the department is required for such extension. (Code 1933, § 13-203.2, en-

acted by Ga. L. 1966, p. 590, § 2; Ga. L. 1973, p. 526, § 1; Ga. L. 1975, p. 475, § 1; Ga. L. 1995, p. 673, § 24; Ga. L. 1997, p. 485, § 21; Ga. L. 1999, p. 674, § 17; Ga. L. 2003, p. 843, § 7.)

**The 2003 amendment**, effective July 1, 2003, in paragraph (c)(1), added the first sentence and substituted the present provisions of the second sentence for the former provisions which read: "Any bank doing a

lawful banking business in this state may operate automated teller machines which shall be unstaffed and may be located throughout the state."

### OPINIONS OF THE ATTORNEY GENERAL

**Legislative intent.** — Former Code 1933, § 13-203.2 (see O.C.G.A. § 7-1-603) would normally define the meaning of loan production offices only in reference to the remainder of that section, as opposed to banking law generally; when thus placed in context, the clear purpose of the enactment was to perfect Georgia's then existing legislation relating to expansion or extension of existing parent banks, branch banks, bank offices and bank facilities. 1976 Op. Att'y Gen. No. 76-116.

**Loan production offices may not be expanded or extended.** — Former Code 1933, § 13-203.2 (see O.C.G.A. § 7-1-603) meant that loan production offices, though they

remain bank facilities for all other purposes pursuant to former Code 1933, § 13-201 (see O.C.G.A. § 7-1-600(2)), may not be expanded or extended. 1976 Op. Att'y Gen. No. 76-116.

**Foreign state banks may not maintain, directly or indirectly, loan production offices within this state.** 1976 Op. Att'y Gen. No. 76-116.

**Automated teller operations limited to financial institutions.** — A nonfinancial institution may not establish and operate on its own behalf an unmanned automated teller facility which provides cash withdrawal services. 1985 Op. Att'y Gen. No. 85-2.

### RESEARCH REFERENCES

**ALR.** — Branch banks, 50 ALR 1340; 136 ALR 471.

What is a "branch bank" within statutes

regulating the establishment of branch banks, 23 ALR3d 683.

### 7-1-604. Banking business prohibited except as allowed by Title 7.

No bank shall carry on or conduct or do a banking business in this state except in accordance with the provisions of this title which govern entry into this state to conduct such a business. "A banking business" is the business which a bank is authorized to do pursuant to this title. (Code 1933, § 13-204.1, enacted by Ga. L. 1967, p. 105, § 1; Ga. L. 1970, p. 954, § 5; Ga. L. 1999, p. 674, § 17.)

### JUDICIAL DECISIONS

**Georgia banks may not use armored cars to extend geographic reach of their banking facility.** *Jackson v. First Nat'l Bank*, 430 F.2d 1200 (5th Cir. 1970), cert. denied, 401 U.S. 947, 91 S. Ct. 933, 28 L. Ed. 2d 230 (1971).

**Use of armored cars violating section.** —

Operation of armored truck bank messenger service of national bank, whose function is to transmit funds to bank, make change, transmit funds from bank, and furnish teller service for payroll cashing, constitutes carrying on, conducting or doing bank business



through banking facilities other than on premises of place of business of national bank and as such is illegal under former Code 1933, § 13-204.1 (see O.C.G.A. § 7-1-604). *Jackson v. First Nat'l Bank*, 292 F. Supp. 156 (N.D. Ga. 1968), *aff'd*, 430 F.2d 1200 (5th Cir. 1970), *cert. denied*, 401 U.S. 947, 91 S. Ct. 933, 28 L. Ed. 2d 230 (1971).

Armored cars owned by bank, which picked up deposits, were engaged in branch

banking, even though depositors using services offered by the armored cars entered into contract with bank that deposits delivered to armored car would not be deemed received until they were physically delivered into hands of teller on bank's premises. *Jackson v. First Nat'l Bank*, 430 F.2d 1200 (5th Cir. 1970), *cert. denied*, 401 U.S. 947, 91 S. Ct. 933, 28 L. Ed. 2d 230 (1971).

### OPINIONS OF THE ATTORNEY GENERAL

**Participation of bank with brokerage in offering investment program.** — The actions of a bank, participating with a brokerage in offering a particular type of investment pro-

gram, do not constitute the business of banking in violation of O.C.G.A. § 7-1-241 or O.C.G.A. § 7-1-604. 1981 Op. Att'y Gen. No. 81-59.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 20 et seq., 172.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 28, 43, 44.

**ALR.** — What is a "branch bank" within statutes regulating the establishment of branch banks, 23 ALR3d 683.

### 7-1-605. Bank holding companies — Definitions; when company deemed to control shares.

(a)(1) Except as provided in paragraph (5) of this subsection, "bank holding company" means any company which has control over any bank or over any company that is or becomes a bank holding company by virtue of this part.

(2) Any company has "control" over a bank or over any company if:

(A) The company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank or company;

(B) The company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

(C) The commissioner determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(3) For the purposes of any proceeding under subparagraph (C) of paragraph (2) of this subsection, there is a presumption that any company which directly or indirectly owns, controls, or has power to vote less than 5 percent of any class of voting securities of a given bank or company does not have control over that bank or company.

(4) In any administrative or judicial proceeding under this part, other than a proceeding under subparagraph (C) of paragraph (2) of this

subsection, a company may not be held to have had control over any given bank or company at any given time unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 percent or more of any class of voting securities of the bank or company, or had already been found to have control in a proceeding under subparagraph (C) of paragraph (2) of this subsection.

(5) Notwithstanding any other provision of this subsection:

(A) No bank and no company owning or controlling voting shares of a bank is a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraphs (2) and (3) of subsection (c) of this Code section. For the purpose of the preceding sentence, bank shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto, except that this limitation is applicable in the case of a bank or company acquiring such shares prior to July 1, 1976, only if the bank or company has the right, consistent with its obligations under the instrument, agreement, or other arrangement establishing the fiduciary relationship, to divest itself of such voting rights and fails to exercise that right to divest within a reasonable period not to exceed one year after July 1, 1976; and

(B) No company is a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith until two years after the date of acquisition.

(6) For the purposes of this part, any successor to a bank holding company shall be deemed to be a bank holding company from the date on which the predecessor company became a bank holding company.

(b) As used in this Code section and in Code Sections 7-1-606 through 7-1-608, the term:

(1) "Bank" means the same as defined in Code Section 7-1-600.

(2) "Company" means any corporation, partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within 25 years or not later than 21 years and ten months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any state or any qualified family partnership as defined in the federal Bank Holding Company Act of 1956, as amended.

(3) The "Georgia Bank Holding Company Act" shall mean and include this Code section and Code Sections 7-1-606 through 7-1-608

together with Part 19 of this article and any applicable rules and regulations.

(4) "Subsidiary," with respect to a specified bank holding company, means:

(A) Any company 25 percent or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such bank holding company or is held by it with power to vote;

(B) Any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or

(C) Any company with respect to the management or policies of which such bank holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the commissioner after notice and opportunity for hearing.

(5) "Successor" shall include any company which acquires directly or indirectly from a bank holding company shares of any bank, when and if the relationship between such company and the bank holding company is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of such shares of such bank. The commissioner may, by regulation, further define the term "successor" to the extent necessary to prevent evasion of the purposes of this part.

(c) For the purposes of this part:

(1) Shares owned or controlled by any subsidiary of a bank holding company shall be deemed to be indirectly owned or controlled by such bank holding company;

(2) Shares held or controlled directly or indirectly by trustees for the benefit of:

(A) A company;

(B) The shareholders or members of a company; or

(C) The employees (whether exclusively or not) of a company;

shall be deemed to be controlled by such company; and

(3) Shares transferred after July 1, 1976, by any bank holding company (or by the company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the commissioner, after opportunity for hearing, determines that the



transferor is not in fact capable of controlling the transferee. (Code 1933, § 13-207, enacted by Ga. L. 1960, p. 67, § 6; Ga. L. 1973, p. 281, § 1; Ga. L. 1976, p. 168, § 2; Ga. L. 1998, p. 795, § 26; Ga. L. 1999, p. 674, § 17.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1997, in subsection (a), “subparagraph (C) of paragraph (2)” was substituted for “subparagraph (2)(C)” in paragraphs (a)(3) and (a)(4).

Pursuant to Code Section 28-9-5, in 1999, “this Code section and Code Sections 7-1-606 through 7-1-608” was substituted for “Code Sections 7-1-605 through 7-1-608” in paragraph (b)(3).

**Law reviews.** — For article, “Bank Directors: Understanding Their Role, Responsibility and Liability,” see 40 Mercer L. Rev. 587 (1989).

For comment on *United States v. Citizens & S. Nat’l Bank*, 422 U.S. 86, 95 S. Ct. 2099, 45 L. Ed. 2d 41 (1975), see 10 Ga. L. Rev. 641 (1976).

### JUDICIAL DECISIONS

**Cited** in *Independent Bankers Ass’n v. Dunn*, 230 Ga. 345, 197 S.E.2d 129 (1973); *United States v. Citizens & S. Nat’l Bank*, 372

F. Supp. 616 (N.D. Ga. 1974), *aff’d*, 422 U.S. 86, 95 S. Ct. 2099, 45 L. Ed. 2d 41 (1975).

### OPINIONS OF THE ATTORNEY GENERAL

**Commissioner has discretion to promulgate rules for regulation and examination.** — Amendments to Georgia bank holding company statutes commit promulgation of rules for regulation, examination and control of bank holding companies doing business in Georgia to discretion of the commissioner, who should exercise the commissioner’s discretion in issuance of rules and regulations to extent necessary to effectuate purposes of bank holding company statutes. 1976 Op. Att’y Gen. No. 76-76.

**Acquisition of security interest in bank’s shares** clearly brings transactions within scope of former Code 1933, § 13-207 (see O.C.G.A. § 7-1-605). 1976 Op. Att’y Gen. No. 76-26.

**Unless shareholders are mere intermediaries shares not attributed to company.** — Former Code 1933, § 13-207 (see O.C.G.A. § 7-1-605) does not attribute to a company shares of stock of a bank held by the company’s shareholders, unless company is in control of arrangement or is exercising control over the bank, using its shareholder as an intermediary. 1976 Op. Att’y Gen. No. 76-76.

**Branch banking and bank holding company restrictions apply to bank facilities conducting only trust business.** 1980 Op. Att’y Gen. No. 80-156.

**Independent trustees of profit-sharing plan may be deemed a bank holding company.** — Independent trustees of the profit-sharing plan for the employees of a bank would, in the event that the trust should directly or indirectly own, control, or hold, with the power to vote, more than 5 percent of the voting shares of two or more banks, be a bank holding company within the meaning of Georgia bank holding company laws. 1974 Op. Att’y Gen. No. 74-151.

**Agreements not within subparagraph (a)(5)(B).** — Agreement made in course of securing previously contracted debt which transfers control of shares of stock in bank does not fall within reach of former Code 1933, § 13-207 (see O.C.G.A. § 7-1-605) provided that shares are disposed of within two years from date of acquisition. 1976 Op. Att’y Gen. No. 76-26.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 23.

**7-1-606. Bank holding companies — Actions unlawful without prior approval of commissioner; exceptions.**

(a)(1) On and after July 1, 1976, it shall be unlawful, except with the prior approval of the commissioner:

(A) For any action to be taken that causes any company to become a bank holding company;

(B) For any action to be taken that causes a bank to become a subsidiary of a bank holding company;

(C) For any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control 5 percent or more of the voting shares of such bank;

(D) For any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank;

(E) For any bank holding company to merge or consolidate with any other bank holding company; or

(F) For any bank holding company to take any action which would violate the federal Bank Holding Company Act of 1956, as amended.

(2) Notwithstanding paragraph (1) of this subsection, this prohibition shall not apply to:

(A) Shares acquired by a bank:

(i) In good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in paragraph (2) of subsection (b) of Code Section 7-1-605 and except as provided in paragraphs (2) and (3) of subsection (c) of Code Section 7-1-605; or

(ii) In the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after July 1, 1976, in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired;

(B) Additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition; or

(C) Transactions for which the department has established by rule, regulation, or written policy a streamlined or alternative procedure, if such procedure specifically dispenses with the need for approval by the commissioner.

For the purpose of this paragraph, bank shares acquired after July 1, 1976, shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto; but, in such instances, acquisitions may be made without prior approval of the commissioner if the commissioner, upon application filed within 90 days after the shares are acquired, approves retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within two years after issuance of the order of disapproval.

(b)(1) The commissioner shall not approve nor shall any other procedure authorize:

(A) Any acquisition or merger or consolidation under this Code section which would result in a monopoly or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the State of Georgia; or

(B) Any other proposed acquisition or merger or consolidation under this Code section whose effect in any section of the state may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

(2) In every case, the department shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned and the convenience and needs of the community to be served.

(c) Nothing contained in this Code section shall affect the obligation of any person or company to comply with the provisions of any order of any court or of the commissioner entered prior to July 1, 1976.

(d) The commissioner shall not grant any such contemplated approval until he or she shall first cause reasonable public notice of the proposed action to be given in the area to be affected and until he or she shall first afford to the public an opportunity to submit, for the commissioner's consideration, information, objections, and opinions as to the proposed action and its effect. The notice requirement may not apply in the case of a streamlined procedure where the holding company meets certain qualifying criteria established by rule, regulation, or written policy of the department.

(e) Notwithstanding any other provisions of this part, a bank holding company which lawfully controls a bank or has received the requisite



approvals under this Code section to acquire control of a bank may, with the approval of the commissioner, or as otherwise provided in this chapter or by departmental rule or regulation, either at the time such control is obtained or at any time thereafter, merge or consolidate such bank with another of such bank holding company's banking subsidiaries or have another of such bank holding company's banking subsidiaries acquire all or substantially all of the assets of such bank and consequently operate as a branch office of such other banking subsidiary. Nothing in this subsection shall be deemed to supersede, rescind, or modify any provision, requirement, or condition of this Code section which would otherwise be applicable to any acquisition of a banking subsidiary by a bank holding company under this Code section, nor shall it be deemed to supersede, rescind, or modify any provision, requirement, or condition of Part 14, 15, 16, 19, or 20 of this article which would otherwise be applicable to the merger of banks or the acquisition or sale of all or substantially all of the assets of a bank. (Code 1933, § 13-207.1, enacted by Ga. L. 1976, p. 168, § 3; Ga. L. 1980, p. 542, § 1; Ga. L. 1985, p. 1506, § 1; Ga. L. 1997, p. 143, § 7; Ga. L. 1998, p. 795, § 27; Ga. L. 1999, p. 674, § 17.)

**U.S. Code.** — The Federal Bank Holding Company Act, referred to in subparagraph (a)(1)(F) of this section, is codified as 12 U.S.C. § 1841 et seq.

**Law reviews.** — For annual survey of law of business associations, see 43 Mercer L. Rev. 85 (1991).

## JUDICIAL DECISIONS

**Purpose of subparagraph (a)(1)(C).** — It is unlawful for any bank holding company to acquire or hold direct or indirect ownership or control of more than five percent of the voting shares of any bank. The purpose of the law is to preserve independence of such banks from the holding company. *Independent Bankers Ass'n v. Board of Governors*, 516 F.2d 1206 (D.C. Cir. 1975) (decided under former Code 1933, § 13-207(a)(2) as it read prior to revision by Ga. L. 1976, p. 168, § 3).

**Acquisition and operation of branch banks by holding company's subsidiary.** — Although a bank holding company may change the corporate structure of its banking subsidiaries through merger, consolidation, or purchase, and may continue all of the banking activities of the component banks, a bank holding company may not, through its banking subsidiary, acquire "branch banks" and continue to operate them as such. *First Nat'l Bank of Commerce*

*v. Community Bankers Ass'n*, 260 Ga. 371, 394 S.E.2d 95 (1990).

**"Branch" not necessarily interchangeable with "bank".** — The term "branch", as used in O.C.G.A. § 7-1-606(e), is not necessarily interchangeable with "bank." *Community Bankers Ass'n v. First Nat'l Bank of Commerce*, 193 Ga. App. 569, 388 S.E.2d 387 (1989), *aff'd*, 260 Ga. 371, 394 S.E.2d 95 (1990).

**Merger with branch not approved without merging entire bank.** — Nothing in the Code expresses or implies any intent to permit approval of a bank holding company's merging or consolidating with, or acquiring control of, a branch bank by itself without merging or consolidating with, or acquiring control of, the entire bank. *Community Bankers Ass'n v. First Nat'l Bank of Commerce*, 193 Ga. App. 569, 388 S.E.2d 387 (1989), *aff'd*, 260 Ga. 371, 394 S.E.2d 95 (1990).

### OPINIONS OF THE ATTORNEY GENERAL

**Exemption to branching prohibition under § 7-1-601(c).** — It seems clear that O.C.G.A. § 7-1-606(e) creates at least a limited exception to branching prohibition of O.C.G.A. § 7-1-601(c). 1981 Op. Att'y Gen. No. 81-74.

**Operation of savings and loan across county lines.** — The only branch of a savings and loan association located in the county affected, which is lawfully controlled by a bank holding company or as to which the bank holding company has received the requisite approvals to acquire control, may be lawfully acquired by a banking subsidiary of a bank holding company through a purchase and assumption and operated across county lines as a branch of the banking subsidiary; provided, such acquisition is ap-

proved by the commissioner of banking and finance. 1988 Op. Att'y Gen. No. 88-13.

**Merger of subsidiaries of holding company across county lines.** — With respect to circumstances under which a bank holding company may merge two subsidiaries across county lines, there are two requirements: (1) the commissioner must approve, and (2) merger must take place at time holding company acquires bank which is to become a branch bank following merger. 1981 Op. Att'y Gen. No. 81-74.

Careful phrasing of O.C.G.A. § 7-1-606(e) and its placement into existing statutes are inconsistent with intent to authorize bank holding companies generally to merge their subsidiaries across county lines. 1981 Op. Att'y Gen. No. 81-74.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 23, 195 et seq., 234.

#### **7-1-607. Bank holding companies — Registration, reporting, examinations, and control.**

(a) On July 1, 1976, and annually thereafter on dates established by the commissioner, each bank holding company shall register with the commissioner on forms provided or prescribed by him or her, which may include such information with respect to the financial condition, operation, management, and intercompany relationships of the bank holding company and its subsidiaries and related matters as the commissioner may deem necessary or appropriate to carry out the purposes of this part.

(b) The commissioner is authorized to issue such regulations and orders as may be necessary to enable him or her to administer and carry out the purposes of this Code section and prevent evasions thereof, and for the purpose of lessening the regulatory burden to waive certain requirements associated with the annual reporting requirements for bank holding companies that do not have their principal place of business in Georgia and do not own Georgia banks.

(c) The commissioner from time to time may require reports under oath to keep him or her informed as to whether the provisions of this Code section and such regulations and orders thereunder issued by him or her have been complied with; may make examinations of each bank holding company and each subsidiary thereof, the cost of which may be assessed

against and paid by such holding company; and shall, as far as possible, use the reports of examination made by the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System for the purposes of this Code section.

(d) Bank holding companies and subsidiaries or affiliates thereof shall be regulated, controlled, and examined by the commissioner to the same extent that he or she regulates, controls, and examines state banks and other financial institutions under his or her jurisdiction, which would be in addition to the authority of the Federal Reserve Board as fixed by the laws of the United States. The commissioner is authorized, directed, and required to promulgate, with precision, rules and regulations and investment procedures in the regulation, examination, and control of bank holding companies doing business in this state. (Code 1933, § 13-207.2, enacted by Ga. L. 1976, p. 168, § 4; Ga. L. 1999, p. 674, § 17.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Commissioner has discretion to promulgate rules for regulation and examination.**

— Amendments to Georgia bank holding company statutes commit promulgation of rules for regulation, examination and control of bank holding companies doing busi-

ness in Georgia to discretion of the commissioner, who should exercise the commissioner's discretion in issuance of rules and regulations to extent necessary to effectuate purposes of bank holding company statutes. 1976 Op. Att'y Gen. No. 76-76.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 23, 108.

11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1217, 1219.

#### **7-1-608. Bank holding companies — Lawful and unlawful acquisitions, formations, and mergers.**

(a) It shall be unlawful for a bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank, including any federal savings and loan association or federal savings bank, if, after such acquisition, such bank holding company will directly or indirectly own or control 5 percent or more of the voting shares of such bank, or for any company to become a bank holding company as a result of the acquisition of control of such bank, unless:

(1) The bank being acquired is either a "bank" for the purposes of the federal Bank Holding Company Act of 1956, as amended (12 U.S.C. Section 1841), or a "savings and loan," a "state savings and loan," a "savings bank," or a "federal savings bank" whose deposits are insured under a federal deposit insurance program; and

(2) Such bank of the type described in paragraph (1) of this subsection has been in existence and continuously operating or incorporated as a bank for a period of three years or more prior to the date of acquisition.



(b) Notwithstanding the provisions of this Code section, the following activities are permitted. These activities regarding acquisitions by purchase and by formation are to be considered exceptions to the three-year age requirement contained in paragraph (2) of subsection (a) of this Code section:

(1) A bank holding company may acquire all or substantially all of the shares of a bank or trust company organized solely for the purpose of facilitating the acquisition of a federal or state chartered bank, savings and loan association, savings bank, building and loan association, or other corporation doing a banking business in this state or the trust department of such institutions, which has been in existence and continuously operating or incorporated as such an institution or exercising trust powers for the minimum period prescribed in subsection (a) of this Code section;

(2) A company may become a bank holding company by virtue of acquiring control of a bank if neither the company nor any other company controlled by or controlling such company controls any other bank domiciled in this state or elsewhere;

(3) A bank holding company registered with the department and lawfully owning a bank or a branch of a bank which was formed by the acquisition and subsequent merger of a Georgia bank, which bank or branch does a lawful banking business in this state, may acquire control through formation of a de novo bank in Georgia, provided that departmental approval and any required federal approvals are obtained. No out-of-state bank holding company may enter Georgia to do a banking business by formation of a de novo bank; and

(4) A de novo bank established or formed pursuant to paragraph (3) of this subsection shall be subject to the three-year age requirement contained in paragraph (2) of subsection (a) of this Code section. A bank holding company may, however, merge or consolidate a de novo bank which may be less than three years old and that is established pursuant to paragraph (3) of this subsection into another bank owned by that holding company.

(c) The department may waive the application of the three-year age requirement in the case of a bank that has been found by federal or state regulators to be:

(1) Insolvent or in an unsafe or unsound condition to transact its business;

(2) In a condition where it has generally suspended payment of its obligations without authority of law; or

(3) Under any plan, order, or agreement of any kind with the FDIC under Section 12, 13, or 38 of the Federal Deposit Insurance Act, 12

U.S.C. Section 1811, et seq., as amended. (Code 1933, § 13-207.3, enacted by Ga. L. 1976, p. 168, § 5; Ga. L. 1980, p. 1081, § 1; Ga. L. 1981, p. 1008, § 1; Ga. L. 1983, p. 602, § 15; Ga. L. 1985, p. 246, § 2; Ga. L. 1987, p. 1586, § 10; Ga. L. 1993, p. 917, § 5; Ga. L. 1996, p. 848, § 11; Ga. L. 1997, p. 143, § 7; Ga. L. 1999, p. 674, § 17; Ga. L. 2000, p. 174, § 14; Ga. L. 2002, p. 670, § 1.)

**The 2002 amendment**, effective May 10, 2002, substituted “three years” for “five years” in paragraphs (a)(2) and (b)(4) and substituted “three-year age requirement” for “five-year age requirement” throughout subsections (b) and (c).

**Law reviews.** — For article discussing compliance with Federal Securities Act of 1933 in bank acquisitions and the issuance of securities of bank holding companies, see 14 Ga. St. B.J. 114 (1978).

### OPINIONS OF THE ATTORNEY GENERAL

**Scope of application.** — Prohibition of former Code 1933, § 13-207.3 (see O.C.G.A. § 7-1-608) applies equally to out-of-state banks and bank holding companies and to those organized in Georgia, or, in the case of national banks, located in Georgia. 1980 Op. Att’y Gen. No. 80-156.

**Former Code 1933, § 13-207.3** (see O.C.G.A. § 7-1-608) was not designed to

prohibit “phantom bank reorganizations.” 1980 Op. Att’y Gen. No. 80-156.

**Former Code 1933, § 13-207.3** (see O.C.G.A. § 7-1-608) prohibits transactions whereby bank’s trust department becomes separate corporation wholly owned by bank or bank’s parent. 1980 Op. Att’y Gen. No. 80-156.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 521, 620.

### 7-1-609. Civil actions by department to enforce part.

The department may bring an appropriate civil action to enforce any provision of this part, whether by injunction or otherwise, in any superior court of this state having jurisdiction of one or more of the defendants. (Code 1933, § 13-208, enacted by Ga. L. 1960, p. 67, § 7; Ga. L. 1970, p. 954, § 6.)

### JUDICIAL DECISIONS

**Construction of word “may” in section.** — Rule for construction of word “may” in a statute is, that when such statute concerns public interest, or affects rights of third persons, the word “may,” shall be construed to mean “must” or “shall.” Independent Bankers Ass’n v. Dunn, 230 Ga. 345, 197 S.E.2d 129 (1973).

**Commissioner may proceed against state or national banks under this section.** — It is

clear that the superintendent (now commissioner) is authorized to bring an action to enjoin a state bank for violation of state’s branching laws and the superintendent is likewise authorized to proceed against national banks for violation of Georgia’s laws. Jackson v. First Nat’l Bank, 349 F.2d 71 (5th Cir. 1965).

**RESEARCH REFERENCES**

**C.J.S.** — 9 C.J.S., Banks and Banking,  
§ 152.

**7-1-610. National bank rights.**

National banks shall have the same but no greater rights under or by virtue of this part than the rights granted to banks and trust companies organized under the laws of this state. (Ga. L. 1960, p. 67, § 2.)

**JUDICIAL DECISIONS**

**Cited** in Jackson v. First Nat'l Bank, 349  
F.2d 71 (5th Cir. 1965).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and  
Financial Institutions, § 1.      **C.J.S.** — 9 C.J.S., Banks and Banking, § 2.

**7-1-611. Penalties for violations.**

Any bank, bank holding company, or company (as defined in Code Section 7-1-605) which violates subsection (a) of Code Section 7-1-601 or any provision of Code Section 7-1-602, Code Section 7-1-603, or Code Sections 7-1-605 through 7-1-608 shall, upon conviction, be fined not less than \$500.00 nor more than \$5,000.00 unless it shall cease and desist therefrom within 60 days after notice of any such violation served on it by the department. Each day on which such violation occurs shall constitute a separate offense. (Code 1933, § 13-9938, enacted by Ga. L. 1960, p. 67, § 8; Ga. L. 2000, p. 136, § 7.)

**RESEARCH REFERENCES**

**C.J.S.** — 9 C.J.S., Banks and Banking,  
§ 31.

**7-1-612. Power of banks to contract with other banks for trust services.**

Notwithstanding any other provisions of this part to the contrary, any bank or trust company which does not exercise trust powers as provided in this chapter, whether or not such powers have been incorporated into its articles, may, with the consent of the department, contract with any bank or trust company exercising trust powers to provide for the latter bank or trust company to offer trust services through the branches and offices of the former bank or trust company. (Code 1981, § 7-1-612, enacted by Ga. L. 1983, p. 602, § 16; Ga. L. 1986, p. 1244, § 2.)



## PART 19

## INTERSTATE ACQUISITIONS OF BANKS AND BANK HOLDING COMPANIES

**Law reviews.** — For article, “Georgia’s Interstate Banking Legislation,” see 20 Ga. St. B.J. 186 (1984).

For note on the 1994 amendments of Code Sections 7-1-620 to 7-1-626 and enact-

ment of Code Section 7-1-627 (now repealed) of this part, prior to the 1996 revision of this part, see 11 Ga. St. U.L. Rev. 50 (1994).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 8 et seq.

**7-1-620. Purpose of this part.**

This part governs the acquisition of banks having banking offices in Georgia by bank holding companies controlling bank subsidiaries having banking offices outside this state. It further governs the acquisition of banks having banking offices outside this state by bank holding companies controlling bank subsidiaries having banking offices in Georgia. It sets forth application, notice, registration, and other related requirements. Acquisitions of banks having banking offices only in Georgia by bank holding companies controlling only bank subsidiaries having banking offices solely in Georgia are governed by the provisions of Code Sections 7-1-605 through 7-1-608. (Code 1981, § 7-1-620, enacted by Ga. L. 1996, p. 279, § 1; Ga. L. 2004, p. 631, § 7.)

**The 2004 amendment,** effective May 13, 2004, part of an Act to revise, modernize, and correct the Code, substituted “Code Sections 7-1-605 through 7-1-608” for “Code Sections 7-1-605 et seq.” at the end of the last sentence of this Code section.

**Editor’s notes.** — Ga. L. 1996, p. 279, § 1, renumbered former Code Section 7-1-620 as present Code Section 7-1-621.

**Law reviews.** — For review of 1996 banking and finance legislation, see 13 Ga. St. U. L. Rev. 1.

**7-1-621. Definitions.**

As used in this part, the term:

(1) “Acquire,” as applied to a bank holding company, means any of the following actions or transactions:

(A) The merger or consolidation with another bank holding company;

(B) The acquisition of the direct or indirect ownership or control of voting shares of another bank holding company or bank if, after such acquisition, such bank holding company will directly or indirectly own or control more than 5 percent of any class of voting shares of such bank holding company or bank;

(C) The direct or indirect acquisition of all or substantially all of the assets of another bank holding company or bank; or

(D) The taking of any other action that would result in the direct or indirect control of another bank holding company or bank.

“Acquire” shall also include a transaction where a bank subsidiary of a bank holding company merges or consolidates with, or acquires all or substantially all of the assets of, another bank.

(2) “Bank” means any insured institution as such term is defined in Section 3(h) of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(h) or any institution eligible to become such, provided that the term “bank” shall not include any “foreign bank” (which is defined as in 12 U.S.C. Section 3101 of the International Banking Act of 1978). The term “bank” as used in this part shall include any building and loan association, savings and loan association, or state savings and loan association as such terms are defined in Code Section 7-1-4 and shall include federal savings banks and similar banking entities chartered under the laws of any state and whose deposits are insured under a federal deposit insurance program.

(3) “Bank holding company” means any company which is a bank holding company under either Code Section 7-1-605 or Section 2(a) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841(a).

(4) “Bank supervisory agency” means:

(A) The Office of Comptroller of Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, and any successor to those agencies; and

(B) The agency of a state with primary responsibility for chartering and supervising banks.

(5) “Banking office” or “banking location” means a main office or a branch office as such terms are defined in this chapter or any other office at which a bank accepts deposits.

(6) “Commissioner” means the commissioner of banking and finance then in office and, where appropriate, all of his or her successors and predecessors in office.

(7) “Control” means that which is set forth either in Code Section 7-1-605 or Section 2(a) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841(a).

(8) “Deposits” means, with respect to a bank, all demand, time, and savings deposits of individuals, partnerships, corporations, the United

States government, and states and political subdivisions in the United States. Determinations of deposits shall be made by reference to regulatory reports of condition or similar reports filed by such bank with state or federal regulatory authorities.

(9) "Georgia bank" means a bank whose home state is Georgia.

(10) "Georgia bank holding company" means a bank holding company that:

(A) Has its principal place of business in the State of Georgia; and

(B) Is not controlled by a bank holding company other than a Georgia bank holding company.

(11) "Georgia state bank" means a bank chartered under the laws of the State of Georgia.

(12) "Home state" means any state in the United States:

(A) With respect to a state bank, the state by which the bank is chartered;

(B) With respect to a national bank, the state in which the main office of the bank is located; or

(C) With respect to a foreign bank, the state determined to be the home state of the foreign bank under 12 U.S.C. Section 3101(c) of the International Banking Act.

(13) "Home state regulator" means, with respect to an out-of-state bank, the bank supervisory agency of the state in which such bank is chartered.

(14) "Host state" means a state, other than the home state of a bank, in which the bank maintains or seeks to establish and maintain a branch.

(15) "Insured depository institution" shall have the same meaning as set forth in 12 U.S.C. Section 1813(c)(2) and (3) of the Federal Deposit Insurance Act.

(16) "Interstate merger transaction" means:

(A) The merger or consolidation of banks with different home states and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(B) The purchase of all or substantially all of the assets of a bank whose home state is different from the home state of the acquiring bank.

(17) "Out-of-state bank" means a bank whose home state is not Georgia, but the term does not include a foreign bank.



(18) "Out-of-state bank holding company" means a bank holding company other than a Georgia bank holding company.

(19) "Out-of-state state bank" means a bank chartered under the laws of a state other than Georgia.

(20) "Principal place of business" of a bank holding company means the state of charter in which the aggregate deposits of the bank subsidiaries of such bank holding company are largest.

(21) "Resulting bank" means a bank that has resulted from an interstate merger transaction under Part 20 of this article.

(22) "State" means any state of the United States, including the District of Columbia.

(23) "Subsidiary" means that which is set forth either in Code Section 7-1-605 or Section 2 of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841. (Code 1981, § 7-1-620, enacted by Ga. L. 1984, p. 1467, § 1; Ga. L. 1987, p. 251, § 1; Ga. L. 1988, p. 13, § 7; Ga. L. 1994, p. 215, § 1; Code 1981, § 7-1-621, as redesignated by Ga. L. 1996, p. 279, § 1; Ga. L. 1997, p. 143, § 7; Ga. L. 1999, p. 674, § 18; Ga. L. 2000, p. 174, § 15.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, "banking and finance" was substituted for "the Department of Banking and Finance" in paragraph (6) and "Federal Deposit Insurance" was substituted for "FDI" in paragraph (15).

**Editor's notes.** — Ga. L. 1996, p. 279, § 1,

effective April 1, 1996, renumbered former Code Section 7-1-621 as present Code Section 7-1-622.

**Law reviews.** — For article, "Bank Directors: Understanding Their Role, Responsibility and Liability," see 40 Mercer L. Rev. 587 (1989).

### **7-1-622. Provisions applicable to interstate acquisitions or mergers by bank holding companies; eligibility of applicants; commissioner's ruling required.**

(a) A bank holding company may acquire a bank in Georgia, and a bank holding company having its principal place of business in this state may acquire a bank having banking offices in another state, upon compliance with the provisions of Code Sections 7-1-605 through 7-1-612 and in particular Code Section 7-1-606, which provisions shall be expressly applicable to any such acquisition. Compliance with all applicable regulations, payment of applicable fees, and registration of the holding company shall be required. The restrictions of this Code section shall apply.

(b) Notwithstanding anything contained in subsection (a) of this Code section and subject to the permitted acquisitions of subsection (b) of Code Section 7-1-608, no bank or bank holding company may:

(1) Directly or indirectly acquire a Georgia bank unless such bank has been in existence and continuously operated or incorporated as a bank

for a period of three years or more prior to the date of acquisition. Notwithstanding the foregoing, nothing shall prohibit an out-of-state bank holding company from acquiring all or substantially all of the shares of a Georgia bank organized solely for the purpose of facilitating the acquisition of a bank which has been in existence and continuously operated as a bank for the requisite three-year period; or

(2) Directly or indirectly acquire a bank having banking offices in Georgia if:

(A) Immediately before the consummation of the acquisition for which an application is filed, the applicant (including any insured depository institution affiliate of the applicant) controls any insured depository institution or any branch of an insured depository institution in this state; and

(B) The applicant (including all insured depository institutions which are affiliates of the applicant), upon consummation of the acquisition, would control 30 percent or more of the total amount of deposits of insured depository institutions in this state. The commissioner may by regulation adopt a procedure whereby the foregoing limitations on concentration of deposits may be waived upon showing of good cause. This restriction shall not apply, in the discretion of the commissioner, to transactions complying with paragraph (1) of subsection (b) of Code Section 7-1-623.

(c) The commissioner must rule on any application seeking approval to engage in a transaction under this Code section not later than 90 days following the date of submission of a completed application seeking such approval. If the commissioner decides to hold a public hearing in connection with the application, the time limit specified may be extended to 30 days after the conclusion of the hearing. If the commissioner fails to rule on the application within the requisite period, the proposed transaction shall stand approved.

(d) If any acquisition involves or takes the form of an interstate merger transaction, the banks involved must comply with filing and other requirements in Part 20 of this article in addition to subsection (b) of this Code section.

(e) This part is not intended to discriminate against out-of-state bank holding companies or against foreign bank holding companies in any manner that would violate Section 3(d) of the Bank Holding Company Act, as amended by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. (Code 1981, § 7-1-621, enacted by Ga. L. 1984, p. 1467, § 1; Ga. L. 1994, p. 215, § 2; Code 1981, § 7-1-622, as redesignated by Ga. L. 1996, p. 279, § 1; Ga. L. 1997, p. 485, § 22; Ga. L. 1999, p. 674, § 19; Ga. L. 2002, p. 670, § 2.)

**The 2002 amendment**, effective May 10, 2002, in paragraph (b)(1), substituted “three years” for “five years” in the first sentence and substituted “three-year” for “five-year” in the last sentence.

**Code Commission notes.** — Pursuant to

Code Section 28-9-5, in 1996, “article” was substituted for “chapter” in subsection (d).

**Editor’s notes.** — Ga. L. 1996, p. 279, § 1, effective April 1, 1996, renumbered former Code Section 7-1-622 as present Code Section 7-1-623.

### **7-1-623. Acquisitions not requiring department approval.**

(a) Subject to any applicable restrictions or exceptions provided for in subsection (b) of Code Section 7-1-622, a bank holding company having a bank subsidiary with banking offices in Georgia may acquire a bank that does not have banking offices in this state, and a bank holding company, which may or may not have an out-of-state bank subsidiary having only branch offices in Georgia, may acquire an out-of-state bank with branch offices in Georgia, but shall notify the department at least 30 days prior to the consummation of the proposed transaction. The notification requirements of this subsection shall be satisfied by furnishing the department with a copy of the application or applications filed with applicable bank supervisory agencies seeking approval for the proposed transaction and such other information as the department shall request. In lieu of furnishing the entire application, the applicant may submit to the department a description of the transaction within the same time frame. In this event, the department shall request further information only if needed. The department may, for good cause shown, object to the transaction by letter to the bank holding company and to the appropriate federal or state regulator before consummation of the transaction. Annual registration of the holding company with the department is required so long as it has banking offices in Georgia.

(b) A bank holding company may engage in the transactions described in paragraphs (1) and (2) of this subsection without the necessity of complying with Code Section 7-1-622, provided that it notifies the department not less than 30 days following the consummation of the transaction.

(1) The acquisition of a Georgia bank, if such acquisition has been consummated with assistance from the Federal Deposit Insurance Corporation under Section 13(c) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. Section 1823(c); or

(2) The acquisition of a Georgia bank, if such acquisition has been consummated in the regular course of securing or collecting a debt previously contracted in good faith, as provided in and subject to the requirements of Section 3(a) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1842(a). If the bank acquired under this provision has banking offices in Georgia, the bank or bank holding company must divest the securities or assets acquired within two years of the date of acquisition. The department may, in its discretion,



permit the bank or bank holding company to retain such interest for up to three additional periods of one year each. (Code 1981, § 7-1-622, enacted by Ga. L. 1984, p. 1467, § 1; Ga. L. 1988, p. 13, § 7; Ga. L. 1994, p. 215, § 3; Code 1981, § 7-1-623, as redesignated by Ga. L. 1996, p. 279, § 1; Ga. L. 1999, p. 674, § 20.)

**Editor's notes.** — Ga. L. 1996, p. 279, § 1, Code Section 7-1-623 as present Code Section effective April 1, 1996, renumbered former section 7-1-624.

#### **7-1-624. Prohibited acquisitions.**

(a) Except as expressly permitted under this part, Part 20 of this article, or by federal law, no bank holding company may acquire a bank or a bank holding company controlling a bank having banking offices in Georgia.

(b) In the event any bank holding company makes an acquisition that is prohibited by this part, the commissioner shall require such bank holding company to divest itself immediately of its direct or indirect ownership or control of any Georgia banks or banking offices located in Georgia. In addition, the commissioner shall have the power to enforce any other prohibitions in this part by requiring divestitures of nonconforming banks, bank holding companies, or assets through the imposition of fines and penalties or through the exercise of such other remedies as are provided in this chapter, including but not limited to judicial actions. (Code 1981, § 7-1-623, enacted by Ga. L. 1984, p. 1467, § 1; Ga. L. 1985, p. 149, § 7; Ga. L. 1994, p. 215, § 4; Code 1981, § 7-1-624, as redesignated by Ga. L. 1996, p. 279, § 1; Ga. L. 1997, p. 143, § 7.)

**Editor's notes.** — Ga. L. 1996, p. 279, § 1, Code Section 7-1-624 as present Code Section effective April 1, 1996, renumbered former section 7-1-625.

#### **7-1-625. Provisions applicable to, and qualification of, bank holding companies in state; reciprocal agreements; confidentiality of reports.**

(a) Any bank holding company controlling a bank having banking offices in Georgia shall be subject to the provisions of Code Sections 7-1-605 through 7-1-612 and the rules and regulations of the department applicable to bank holding companies.

(b) Any bank holding company that has a bank subsidiary with banking offices in Georgia that is not otherwise organized under the laws of this state or qualified to do business in this state shall qualify to do business in this state as a foreign corporation and shall advise the department of the location of its initial registered office within this state and the name of its initial registered agent at such location. Such bank holding company shall agree to be bound by all the provisions of Code Sections 7-1-605 through 7-1-612 and by the provisions of this part. Any bank holding company having a Georgia bank subsidiary shall promptly advise the department of any changes in its registered office and agent.

(c) The department may enter into cooperative and reciprocal agreements with the bank regulatory authorities of any state for the periodic examination of bank holding companies and may accept reports of examination and other records from such authorities in lieu of conducting its own examinations. The department may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into such actions independently to carry out its responsibilities under this title and assure compliance with the laws of this state. Any examinations or reports originated by Georgia or by another bank supervisory agency shall be deemed and treated as confidential according to Georgia law, and such confidentiality shall not be affected by the sharing of the examinations or reports. The department shall not be obligated to provide or disclose such examinations and reports to any third party. Agreements to share such examinations or reports shall contain provisions for dealing with confidentiality and subpoenas. (Code 1981, § 7-1-624, enacted by Ga. L. 1984, p. 1467, § 1; Ga. L. 1994, p. 215, § 5; Code 1981, § 7-1-625, as redesignated by Ga. L. 1996, p. 279, § 1.)

**Editor's notes.** — Ga. L. 1996, p. 279, § 1, Code Section 7-1-625 as present Code Section effective April 1, 1996, renumbered former 7-1-626.

#### **7-1-626. Severability; construction with other laws.**

(a) It is the express intention of the Georgia General Assembly to provide a unified and orderly method of permitting limited interstate banking. Thus, if any provision of this part establishing the framework within which interstate banking may occur or providing for registration, approval, and supervisory powers of the department and the commissioner is determined by final, nonappealable order of any Georgia or federal court of competent jurisdiction to be invalid or unconstitutional, the remaining provisions of this part shall not be affected and shall continue to apply to any bank, bank holding company, foreign bank, or other person or circumstance.

(b) Nothing contained in this part shall be construed to amend or modify the provisions of any other part of this chapter governing the supervision or regulation of banks and bank holding companies, as defined in this part, or the organization and powers of the department and the commissioner with respect thereto as provided in such other parts. (Code 1981, § 7-1-625, enacted by Ga. L. 1984, p. 1467, § 1; Ga. L. 1994, p. 215, § 6; Code 1981, § 7-1-626, as redesignated by Ga. L. 1996, p. 279, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, “may occur or” was substituted for “may occur,” and a comma was deleted following “commissioner” in subsection (a).

**Editor's notes.** — Ga. L. 1996, p. 279, § 1,

repealed former Code Section 7-1-626, which was based on Code 1981, § 7-1-626, enacted by Ga. L. 1987, p. 1586, § 11; Ga. L. 1993, p. 917, § 6, relating to rights of bank holding companies consisting of building and loan associations, etc.

**7-1-627. Resolution to except bank or bank holding company from acquisition; severability.**

Repealed by Ga. L. 1996, p. 279, § 1, effective April 1, 1996.

**Editor's notes.** — This Code section was based on Code 1981, § 7-1-627 [repealed], enacted by Ga. L. 1994, p. 215, § 7.

**PART 20****INTERSTATE BANKING AND BRANCHING BY MERGER****RESEARCH REFERENCES**

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Banking Institutions, § 156 et seq.

**7-1-628. Purpose and scope of part.**

(a) It is the purpose of this part to permit interstate banking and branching by merger under Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, subject to the limitations and requirements set out in this part and in Parts 14, 15, 18, and 19 of this article.

(b) The scope of this part covers mergers where, upon consummation of the interstate merger transaction, the resulting bank will have banking locations in Georgia and at least one other state. It provides for certain approval, notice, registration, and other requirements. Mergers involving banks having present and resulting branches located only in this state are governed by Parts 14 and 15 of this article. To the extent a bank participating in an interstate merger transaction is owned or controlled by a bank holding company, the applicable provisions of Part 19 of this article shall also apply.

(c) In authorizing the expansion of interstate banking to this state, and in the interests of its citizens, the General Assembly finds that primary consideration should be given to the following:

(1) Affording protection and promoting convenience to bank depositors and other customers of financial institutions in this state;

(2) Preserving the advantages of a sound dual banking system and the competitive equality of state chartered institutions with federally chartered institutions;

(3) Supervising, regulating, and keeping records of all persons, firms, corporations, associations, and other business entities who furnish depository, lending, and associated financial services in this state; and



(4) Providing to the Department of Banking and Finance sufficient powers and responsibilities to implement these considerations.

(d) This part is not intended to discriminate against out-of-state bank holding companies or against foreign bank holding companies in any manner that would violate Section 3(d) of the Bank Holding Company Act, as amended by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. (Code 1981, § 7-1-628, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 1998, p. 128, § 7.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, a comma was added in three places in paragraph (c)(3).

### 7-1-628.1. Definitions.

As used in this part, the term:

(1) “Bank” shall have the same meaning as set forth in 12 U.S.C. Section 1813(h) of the Federal Deposit Insurance Act, provided that the term “bank” shall not include any “foreign bank” (which is defined as in 12 U.S.C. Section 3101 of the International Banking Act of 1978).

(2) “Bank holding company” shall have the same meaning as set forth in 12 U.S.C. Section 1841(a)(1) of the Bank Holding Company Act.

(3) “Bank supervisory agency” shall mean:

(A) Office of Comptroller of Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to those agencies; and

(B) The agency of a state with primary responsibility for chartering and supervising banks.

(4) “Branch” in the context of this part shall have the same meaning as “domestic branch” in 12 U.S.C. Section 1813(o) of the Federal Deposit Insurance Act. Nothing contained in this part shall be construed to amend or modify the provisions of any other part of this article.

(5) “Commissioner” means the commissioner of banking and finance then in office and, where appropriate, all of his or her successors and predecessors in office.

(6) “Control” means that which is set forth either in Code Section 7-1-605 or Section 2(a) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841(a).

(7) “Deposits” means, with respect to a bank, all demand, time, and savings deposits of individuals, partnerships, corporations, the United States government, and states and political subdivisions in the United States. Determinations of deposits shall be made by reference to regula-

tory reports of condition or similar reports filed by such bank with state or federal regulatory authorities.

(8) “Georgia bank” means a bank whose home state is Georgia.

(9) “Georgia bank holding company” means a bank holding company that:

(A) Has its principal place of business in the State of Georgia; and

(B) Is not controlled by a bank holding company other than a Georgia bank holding company.

(10) “Georgia state bank” means a bank chartered under the laws of the State of Georgia.

(11) “Home state” means:

(A) With respect to a state bank, the state by which the bank is chartered;

(B) With respect to a national bank, the state in which the main office of the bank is located; or

(C) With respect to a foreign bank, the state determined to be the home state of the foreign bank under 12 U.S.C. Section 3101(c) of the International Banking Act.

(12) “Home state regulator” means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered.

(13) “Host state” means a state, other than the home state of a bank, in which the bank maintains or seeks to establish and maintain a branch.

(14) “Insured depository institution” shall have the same meaning as set forth in 12 U.S.C. Section 1813(c)(2) and (3) of the Federal Deposit Insurance Act.

(15) “Interstate merger transaction” means:

(A) The merger or consolidation of banks with different home states and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(B) The purchase of all or substantially all of the assets of a bank whose home state is different from the home state of the acquiring bank.

(16) “Out-of-state bank” means a bank whose home state is not Georgia, but the term does not include a foreign bank.

(17) “Out-of-state bank holding company” means a bank holding company other than a Georgia bank holding company.

(18) “Out-of-state state bank” means a bank chartered under the laws of a state other than Georgia.

(19) “Principal place of business” of a bank holding company means the state of charter in which the aggregate deposits of the bank subsidiaries of such bank holding company are largest.

(20) “Resulting bank” means a bank that has resulted from an interstate merger transaction under this part.

(21) “State” means any state of the United States, including the District of Columbia.

(22) “Subsidiary” means that which is set forth either in Code Section 7-1-605 or Section 2 of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841. (Code 1981, § 7-1-628.1, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 1999, p. 674, § 21; Ga. L. 2000, p. 174, § 16.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, “Federal Deposit Insurance” was substituted for “FDI” in paragraphs (1), (4), and (14); “article” was substituted for “chapter” in paragraph

(4); “banking and finance” was substituted for “the Department of Banking and Finance” in paragraph (5); and “State” was substituted for “state” in subparagraph (A) of paragraph (9).

### **7-1-628.2. Mergers permitted; applicable provisions.**

Interstate merger transactions between out-of-state banks and Georgia banks including Georgia state banks shall be permitted provided that the applicable conditions, approvals, and filing requirements are met by participating banks and bank holding companies. The approval procedure for mergers involving banks having offices located only in this state are governed by Parts 14 and 15 of this article. To the extent a bank participating in a merger is owned or controlled by a bank holding company, the provisions of Part 19 of this article shall also apply to the transaction. (Code 1981, § 7-1-628.2, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 1997, p. 485, § 23.)

### **7-1-628.3. Prohibited interstate merger transactions.**

(a) Except as otherwise expressly provided in this subsection, an interstate merger transaction shall not be permitted under this part if:

(1) Immediately before the merger, any two or more banks involved in the transaction (including all insured depository institutions which are affiliates of any such bank) have a branch in this state; and

(2) Upon consummation of such transaction, the resulting bank (including all insured depository institutions that would be “affiliates,” as defined in 12 U.S.C. Section 1841(k) of the resulting bank) would control



30 percent or more of the total amount of deposits held by all insured depository institutions in this state. The 30 percent limitation shall not apply, in the discretion of the commissioner, to transactions complying with paragraph (1) of subsection (b) of Code Section 7-1-623. The commissioner may by regulation adopt a procedure whereby the foregoing limitations on concentration of deposits may be waived upon showing good cause.

(b) An interstate merger transaction shall not be permitted under this part unless the Georgia bank shall have been in existence and continuously operating or incorporated as a bank on the date of such merger or acquisition for a period of at least three years, subject to any applicable exception contained in subsection (b) of Code Section 7-1-608. (Code 1981, § 7-1-628.3, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 1997, p. 485, § 23; Ga. L. 1999, p. 674, § 22; Ga. L. 2002, p. 670, § 3.)

**The 2002 amendment**, effective May 10, 2002, substituted “three years” for “five years” near the end of subsection (b).

#### **7-1-628.4. Permissible interstate merger transactions.**

(a) A Georgia state bank may enter into an interstate merger transaction where the Georgia state bank is the resulting bank, and as a result the Georgia state bank may establish, maintain, and operate one or more branches in another state. The Georgia state bank must seek approval for the merger pursuant to the provisions in Part 14 of this article and must comply with federal law.

(b) An out-of-state bank may enter into an interstate merger transaction with a Georgia bank, and an out-of-state bank resulting from such transaction may maintain and operate branches in Georgia. The requirements of Code Section 7-1-628.5 shall be met by the resulting bank. In order to consummate such a merger with a resulting out-of-state state bank, a Georgia state bank shall comply with Code Sections 7-1-531 through 7-1-533 and 7-1-537, except that the format of the articles of merger submitted in accordance with Code Section 7-1-532 may be in conformity with the resulting bank’s home state law if such law requires a format different from that specified by Code Section 7-1-532. A Georgia state bank shall comply with Code Section 7-1-556 if a national bank or a federal savings bank is to be the resulting bank.

(c) Any out-of-state bank which lawfully establishes a branch in this state or which subsequently becomes the owner of or controls interstate branches in Georgia, if such transaction is not covered by subsection (a) or (b) of this Code section, shall comply with the requirements in Code Section 7-1-628.5. (Code 1981, § 7-1-628.4, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 1999, p. 674, § 23.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, “article” was substituted for “chapter” in subsection (a).

**7-1-628.5. Requirement for out-of-state bank that is resulting bank of interstate merger transaction.**

(a) An out-of-state bank that is to be the resulting bank of an interstate merger transaction shall comply or assure compliance with the following requirements:

(1) Part 19 of this article, if applicable to the transaction shall require any holding company of the resulting bank to comply with Code Sections 7-1-605 through 7-1-612;

(2) An out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a Georgia state bank shall notify the commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency, provide such information as the commissioner may specify, and pay any filing fee required by regulation;

(3) Prior to consummation of the merger, the resulting bank shall provide the commissioner with satisfactory evidence of all required approvals from all relevant bank supervisory agencies;

(4) An out-of-state bank holding company that may be the owner of the resulting bank shall provide satisfactory evidence to the commissioner of compliance with applicable requirements of Article 15 of Chapter 2 of Title 14 of the Georgia Business Corporation Code, “Foreign Corporations,” and shall notify the department of its location, any changes in its initial registered office within this state, and the name of its registered agent at such location. An out-of-state resulting bank shall notify the department of the location of its initial office, any subsequent registered office, and the name of its current registered agent;

(5) Each bank or bank holding company attempting to establish interstate branches in Georgia shall provide to the department a certification that all applicable Georgia laws and regulations have been satisfied or a copy of the Uniform Interagency Branch Application. The department may, if appropriate and after its own investigation, provide to the applicable state or federal regulator a certificate of compliance or a statement of noncompliance with Georgia law, together with any advisory comments; and

(6) The out-of-state bank must certify to the department that while it maintains a branch in Georgia it will meet the conditions set forth in this part and comply with all applicable Georgia laws and any rules issued

under the laws of this state, as well as any orders or directives issued to the bank by the commissioner.

(b) In order to facilitate the cooperation between state regulatory authorities, an out-of-state state bank that is the resulting bank of an interstate merger transaction shall comply or assure compliance with the following additional requirements:

(1) The supervisor of the out-of-state state bank must agree to share with the commissioner examination reports prepared by the supervisor and any other information deemed necessary by the commissioner regarding such bank. The exam reports from any other state shall be considered to be the other state's property and shall be protected as confidential by Georgia law; and

(2) The out-of-state state bank must agree to make available to the commissioner any information that may be deemed necessary to protect Georgia consumers. (Code 1981, § 7-1-628.5, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 1998, p. 128, § 7; Ga. L. 1999, p. 674, § 24.)

#### **7-1-628.6. Powers of out-of-state banks branching into Georgia.**

(a) An out-of-state state bank which establishes and maintains one or more branches in Georgia under this part may conduct any activities at such branch or branches that are authorized under the law of this state for Georgia state banks, and if an activity is one that requires the prior approval of the commissioner, such approval must be secured prior to commencing such activity.

(b) A Georgia state bank may conduct any activities at any branch outside Georgia that are authorized by Georgia law or that are permissible for a bank chartered by the host state where the branch is located, except to the extent such activities are expressly prohibited by the laws of this state or by any regulation or order of the commissioner applicable to the Georgia state bank and except where the activity is one that requires approval from the department, in which case such approval must be secured; provided, however, that the commissioner may waive any prohibition or requirement for approval if he or she determines, by order or regulation, that the involvement of out-of-state branches of the Georgia state bank in particular activities would not threaten the safety or soundness of such bank.

(c) An out-of-state bank that has established or acquired a branch in Georgia under this part may establish or acquire additional branches in Georgia to the same extent, but to no greater extent, that any Georgia bank may establish or acquire a branch in Georgia under applicable federal and state law. Notification to the department from the bank is required at the same time as the application is made to the federal regulator. A letter describing the transaction shall constitute the required notification and



may be written and sent by the bank or the home state regulator. (Code 1981, § 7-1-628.6, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 1999, p. 674, § 25; Ga. L. 2001, p. 970, § 8.)

**Law reviews.** — For article, “Business Associations,” see 53 Mercer L. Rev. 109 (2001).

#### **7-1-628.7. Examinations and reports; powers of commissioner.**

(a) To the extent consistent with subsection (c) of this Code section, the commissioner may make such examinations of any branch established and maintained in this state by an out-of-state state bank as the commissioner may deem necessary to determine whether the branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The provisions of Parts 3 and 4 of Article 1 of this chapter are applicable to examinations.

(b) The commissioner may prescribe requirements for periodic reports regarding any out-of-state bank that operates a branch in Georgia pursuant to this part. The required reports shall be provided by such bank or by the bank supervisory agency having primary responsibility for such bank. Any reporting requirements prescribed by the commissioner under this subsection shall be: (1) consistent with the reporting requirements applicable to Georgia state banks; and (2) appropriate for the purpose of enabling the commissioner to carry out his or her responsibilities under this Code section.

(c) The commissioner may enter into cooperative, coordinating, and information sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in Georgia of an out-of-state state bank or of any branch of a Georgia state bank in any host state, and the commissioner may accept such parties’ reports of examination and reports of investigation in lieu of conducting his or her own examinations or investigations. Agreements to share should contain provisions for dealing with confidentiality and subpoenas.

(d) Notwithstanding any other law to the contrary, the commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a Georgia state bank or an out-of-state state bank operating a branch in this state pursuant to this part to engage the services of such agency’s examiners at a reasonable rate of compensation, to provide the services of the commissioner’s examiners to such agency at a reasonable rate of compensation, or for another arrangement that the commissioner may find expedient and reasonable.

(e) If appropriate in the discretion of the commissioner and pursuant to an interstate agreement with the pertinent host state regulator for the

purpose of facilitating the regulation and supervision of a multistate Georgia state bank, the department may approve and collect from its chartered bank, as agent and home state regulator, examination and supervision fees assessed by a state where the Georgia bank has a branch and may remit such fees to the assessing out-of-state regulator. Such fees shall not be considered revenue payable to the State of Georgia.

(f) In order to facilitate or implement interstate efforts to regulate and supervise a multistate Georgia state bank, the department may adjust its normal supervision examination fee assessment schedule and other rates and charges. Such adjustment may include any examination and supervision fees assessed by host state regulators, pursuant to subsection (e) of this Code section, as a part of the standard supervision and examination assessment.

(g) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Georgia of an out-of-state state bank or any branch of a Georgia state bank in any host state, provided that the commissioner may at any time take such actions independently if he or she deems such actions to be necessary or appropriate to carry out his or her responsibilities under this part or to ensure compliance with the laws of this state, but provided further that, in the case of an out-of-state state bank, the commissioner shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(h) Each out-of-state bank that maintains one or more branches in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and regulations of the department.

(i) Any examinations or reports originated by Georgia or by another bank supervisory agency shall be deemed and treated as confidential according to Georgia law, and such confidentiality shall not be affected by the sharing of the examination or reports. The department shall not be obligated to provide or disclose such examinations or reports to any third party. (Code 1981, § 7-1-628.7, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 2000, p. 174, § 17.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, “chapter” was substituted for “title” in subsection (a) and the designations “(1)” and “(2)” were substituted for “(i)” and “(ii)” in subsection (b).

#### **7-1-628.8. Restrictions on de novo branches.**

(a) A “de novo branch” means a branch of a bank which:

(1) Is originally established by the bank as a branch; and

(2) Does not become a branch of the bank as a result of the acquisition of another bank or of a branch of another bank or as the result of the merger, consolidation, or conversion of any such bank or branch.

(b) No out-of-state bank shall establish or maintain a de novo branch in this state unless such bank has lawfully established a branch in Georgia, and then only to the extent that any Georgia bank could establish such a de novo branch.

(c) By enacting this Code section and Code Section 7-1-628.9, the General Assembly intends to permit entry into Georgia only by acquisition of or merger with an entire bank, subject to the three-year rule contained in Code Sections 7-1-608, 7-1-622, and 7-1-628.3. (Code 1981, § 7-1-628.8, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 1997, p. 485, § 24; Ga. L. 2002, p. 670, § 4.)

**The 2002 amendment**, effective May 10, “five-year rule” near the end of subsection 2002, substituted “three-year rule” for (c).

#### **7-1-628.9. Restrictions on purchase of branches.**

Unless otherwise expressly permitted by Georgia law or regulation, no bank may acquire a branch of any other bank in Georgia without the acquisition of the entire bank, unless the acquiring bank could lawfully establish a branch in the geographic area where the branch to be acquired is located. (Code 1981, § 7-1-628.9, enacted by Ga. L. 1996, p. 279, § 2.)

#### **7-1-628.10. Enforcement actions by commissioner.**

If the commissioner determines that a branch maintained by an out-of-state state bank in this state is being operated in violation of any provision of the laws of this state or that such branch is being operated in an unsafe and unsound manner, the commissioner shall have the authority to take all such enforcement actions as he or she would be empowered to take if the branch were a Georgia state bank, provided that the commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action. (Code 1981, § 7-1-628.10, enacted by Ga. L. 1996, p. 279, § 2.)

#### **7-1-628.11. Regulations; administrative fees.**

The commissioner may promulgate such regulations and may provide for the payment of such reasonable filing, application, assessment, and administrative fees as he or she determines to be necessary or appropriate in order to implement the provisions of this part. (Code 1981, § 7-1-628.11, enacted by Ga. L. 1996, p. 279, § 2.)



**7-1-628.12. Reports required of out-of-state state banks.**

The commissioner may require an out-of-state state bank that maintains or seeks to establish a branch in this state to submit to the department its consolidated reports of condition and income in the form specified by the Federal Financial Institutions Examination Council. In order to determine compliance with Georgia law on deposit concentration limits or other areas of state compliance, other reporting of banks may be required by the commissioner. (Code 1981, § 7-1-628.12, enacted by Ga. L. 1996, p. 279, § 2.)

**7-1-628.13. Notice of merger consolidation, or other transaction involving out-of-state bank.**

Each out-of-state state bank that has established and maintains a branch or which intends to establish a branch in this state pursuant to this part or the person seeking to obtain control of the out-of-state state bank shall give to the commissioner at least 30 days' written notice (or, in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law) of any merger, consolidation, or other transaction that would cause a change of control with respect to such bank or any bank holding company that controls such bank, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, 12 U.S.C. Section 1817(j), or the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841, et seq., or any successor statutes thereto. (Code 1981, § 7-1-628.13, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 2004, p. 631, § 7.)

**The 2004 amendment**, effective May 13, 2004, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

**7-1-628.14. Severability; construction with other laws.**

(a) If any provision of this part or the application of such provision is found by any court of competent jurisdiction in the United States to be invalid as it pertains to any bank, bank holding company, foreign bank, or other person or circumstances, or is found to be superseded explicitly by federal law, the remaining provisions of this part shall not be affected and shall continue to apply to any bank, bank holding company, foreign bank, or other person or circumstance.

(b) Nothing contained in this part shall be construed to amend or modify the provisions of any other part of this chapter governing the supervision or regulation of banks and bank holding companies, as defined in this chapter, or with respect to the organization and powers of the department and the commissioner as provided in such other parts. (Code 1981, § 7-1-628.14, enacted by Ga. L. 1996, p. 279, § 2.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, “part” was substituted for “section” in subsection (a).

### 7-1-628.15. Tax treatment.

(a) All banks engaged in interstate banking and branching in this state shall be obliged to adhere to the tax laws and regulations of Title 48 which pertain to such activities.

(b) The Department of Revenue shall address the tax treatment of financial organizations before June 1, 1997, in order to provide timely and appropriate taxation of banks which have adjusted their corporate structures according to this part and federal law. (Code 1981, § 7-1-628.15, enacted by Ga. L. 1996, p. 279, § 2.)

## ARTICLE 3

### CREDIT UNIONS

**Cross references.** — Credit Union Deposit Insurance Corporation, Ch. 2 of this title. Exemption from securities-registration provisions of securities issued by or guaranteed by credit union, § 10-5-8.

**Administrative rules and regulations.** — Credit unions generally, Official Compila-

tion of Rules and Regulations of State of Georgia, Rules of Department of Banking and Finance, Chapters 80-2-1 through 80-2-10.

**Law reviews.** — For article, “Small Loans Under Georgia Laws,” see 3 Mercer L. Rev. 227 (1952).

## PART 1

### GENERAL PROVISIONS; ORGANIZATION

#### JUDICIAL DECISIONS

**Approved certificate of incorporation is prerequisite to recovery on contract.** — Holding of approved certificate of incorporation in accordance with O.C.G.A. Pt. 1, Ch. 1, T. 7 is condition precedent to recovery on contract by credit union. *Georgia Cent. Credit Union v. Weems*, 157 Ga. App. 439, 278 S.E.2d 88 (1981).

**In contract action, proper organization and licensing must be proved.** — In its

action on a promissory note, whether credit union was properly organized and licensed in accordance with O.C.G.A. Pt. 1, Ch. 1, T. 7 at time of transaction was a matter to be proved by credit union rather than matter to be raised defensively by borrower. *Georgia Cent. Credit Union v. Weems*, 157 Ga. App. 439, 278 S.E.2d 88 (1981).

### 7-1-630. Initial subscribers; contents and filing of articles.

(a) Any number of persons, not less than eight, having a common bond, as defined in subsection (b) of this Code section, may incorporate for the purpose of organizing a credit union in accordance with this article. The

persons so desiring to become incorporated shall execute articles which shall set forth the following:

- (1) The name of the proposed credit union;
- (2) The territory in which it will operate;
- (3) The location where its initial registered office will be located;
- (4) The names and addresses of the subscribers, their occupation, length of service, and that each has subscribed to one share and paid for same;
- (5) The names and addresses of the original directors;
- (6) The proposed field of membership specified in detail and having the same common bond as the subscribers;
- (7) That the purpose and nature of the business are to conduct a credit union with the rights and powers granted by this article; and
- (8) The term of the existence of the credit union, which shall be perpetual unless otherwise limited.

(b) For purposes of this article, "common bond" is described as that specific relationship of occupation, association, or interest; residence within a well-defined neighborhood, community, or rural district; employees of a common employer; or members of a bona fide cooperative, educational, fraternal, professional, religious, rural, or similar organization which tends to create a mutual interest between persons sharing the relationship. Persons related by blood, adoption, or marriage to or living in the same household with a person within such common bond and the surviving spouses of deceased members shall also be considered within the common bond.

(c) The subscribers shall file the articles in triplicate with the department together with the fee specified in Code Section 7-1-862. The department shall certify one copy of the articles and return it to the subscribers. (Ga. L. 1925, p. 165, § 1; Code 1933, § 25-101; Code 1933, § 41A-3001, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1244, § 1; Ga. L. 1989, p. 1257, § 19.)

#### OPINIONS OF THE ATTORNEY GENERAL

Former Code 1933, §§ 25-101, 25-108, and 25-109 (see O.C.G.A. §§ 7-1-630, 7-1-651 and 7-1-653) indicate that each credit union has complete control over member-

ship, and that eight persons could form a credit union and limit membership to the original eight incorporators. 1948-49 Op. Att'y Gen. p. 434.



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 4 et seq., 189. 18A Am. Jur. 2d, Corporations, §§ 199-211. **C.J.S.** — 12 C.J.S., Building and Loan Associations, §§ 12, 13, 31, 32.

**7-1-631. Additional filings with department.**

The subscribers shall also:

(1) File with the department a certificate of the Secretary of State attesting that the name of the proposed credit union has been reserved as authorized by Code Section 7-1-131;

(2) File with the department two copies of proposed bylaws setting forth the following:

(A) The date of the annual meeting, the manner of conducting the same, the number of members constituting a quorum and regulations as to voting, and the manner of notification of the meeting, which shall comply with Code Section 7-1-6, except that, if the credit union maintains an office and the board of directors so determines, notice of the annual meeting or of any special meeting may be given by posting such notice in a conspicuous place in the office of the credit union at least ten days prior to such meeting;

(B) The number of directors, not less than five, all of whom must be members, and their powers and duties, together with the duties of the officers elected by the board of directors;

(C) The qualifications for membership of those coming within the defined common bond as required by this article;

(D) The conditions under which shares may be issued, paid for, transferred, and withdrawn; deposits received and withdrawn; loans made and repaid; and funds otherwise invested; and

(E) The charges which shall be made, if any, for failure to meet obligations punctually; whether or not the credit union shall have the power to borrow; the method of receipting for money; the manner of accumulating a reserve; the manner of determining and paying interest and dividends; and such other matters consistent with this article as may be requisite to the organization and operation of the proposed credit union;

(3) Pay such fee as shall be established by regulation of the department to defray the cost of the investigation required by Code Section 7-1-632, provided that the department shall not be required to set such fee if in its judgment the fee would discourage the organization of credit unions under this article; and

(4) Select at least five qualified persons who agree to serve on the board of directors. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, shall be executed by those who so agree and filed with the department along with the proposed bylaws. (Ga. L. 1925, p. 165, § 2; Code 1933, § 41A-3002, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1244, § 2; Ga. L. 1989, p. 1211, § 11.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d, Corporations, § 36.

**C.J.S.** — 12 C.J.S., Building and Loan Associations, §§ 10, 11, 14, 27.

#### **7-1-632. Approval or disapproval by department; certificate of incorporation.**

(a) The department shall make an appropriate investigation of the articles and bylaws for the purpose of determining:

(1) Whether the articles and bylaws conform to this article;

(2) The general character and qualifications of the subscribers and the financial stability and future prospects of the sponsoring company, if any;

(3) The economic advisability of establishing the proposed credit union and such other facts and circumstances bearing on the proposed credit union as in the opinion of the department may be relevant;

(4) That a common bond exists in accordance with Code Section 7-1-630; and

(5) That the subscribers and person or corporation sponsoring the credit union are in agreement as to the services, if any, that the sponsor will provide.

(b) If the department determines to its satisfaction that the proposed credit union meets the criteria set forth above, it shall, within 90 days from receipt of the articles and in compliance with Code Section 7-1-631, send a copy of the articles and written approval of the articles to the Secretary of State after making such changes in the articles or bylaws consistent with this article and with the consent of the subscribers that it deems appropriate. Such approval shall indicate any changes made to the articles including changes from the proposed field of membership. If the department shall disapprove the articles, the procedures of subsection (b) of Code Section 7-1-635 shall be followed.

(c) Upon receipt of the approval of the department, the Secretary of State shall thereupon issue a certificate attesting to the incorporation of the credit union. The credit union shall, however, confine itself to organizational activities until it receives a permit to do business. (Ga. L. 1925, p. 165,

§ 3; Code 1933, § 25-103; Code 1933, § 41A-3003, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1983, p. 602, § 17; Ga. L. 1989, p. 1257, § 20.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d, Corporations, § 40.      **C.J.S.** — 18 C.J.S., Corporations, §§ 33-39.

#### 7-1-633. Organizational meeting of directors; commencing of business.

(a) Within 30 days after receipt of the certificate of incorporation from the Secretary of State, an organizational meeting of the board of directors named in the articles of incorporation shall be held for the purpose of accepting the certificate and bylaws, appointing a credit committee or, in lieu thereof, loan officers and a supervisory committee, and electing or appointing the officers, as provided in Code Section 7-1-655, who shall serve until the first directors' meeting after the first annual meeting. Notice of the meeting shall be given at least five days prior to the date of the meeting.

(b) When the organization has been completed, the credit union shall notify the department of this fact and may commence business subject to its obtaining deposit insurance as required in Code Section 7-1-666. (Ga. L. 1925, p. 165, §§ 4, 13; Code 1933, §§ 25-106, 25-113; Ga. L. 1956, p. 742, § 2; Ga. L. 1968, p. 465, § 6; Code 1933, § 41A-3004, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1244, § 3; Ga. L. 2004, p. 458, § 4.)

**The 2004 amendment**, effective July 1, 2004, inserted "or, in lieu thereof, loan officers" in the middle of the first sentence of subsection (a).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d, Corporations, §§ 44, 45. 19 Am. Jur. 2d, Corporations, § 1081.      **C.J.S.** — 18 C.J.S., Corporations, § 51.

#### 7-1-634. Amendment of articles and bylaws.

(a) Amendments to the bylaws of a credit union may be adopted and amendments of the articles may be requested by the affirmative vote of two-thirds of the authorized number of members of the board of directors at any duly held meeting thereof if the members of the board have been given prior written notice of said meeting and the notice has contained a copy of the proposed amendment or amendments. No amendment of the bylaws or of the articles shall become effective until approved in writing by the department.

(b) Every proposed amendment of the articles shall be filed in triplicate with the department together with the fee specified in Code Section



7-1-862. Proposed amendments of the bylaws shall be filed with the department.

(c) The department shall maintain a permanent record of any approved amendment to the bylaws of a credit union which changes the field of membership proposed in the original articles or as subsequently amended. (Ga. L. 1925, p. 165, §§ 6, 11; Code 1933, §§ 25-104, 25-121; Ga. L. 1967, p. 595, § 3; Code 1933, § 41A-3005, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 1681, § 2; Ga. L. 1983, p. 602, § 18; Ga. L. 1989, p. 1257, § 21; Ga. L. 1995, p. 673, § 25.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Department may not disapprove bylaws which fully comply with Title 7, Article 3, Part 1.** — Superintendent (now commissioner) may not disapprove a bylaw which fully complies with O.C.G.A. Title 7, Article

3, Part 1; it may only disapprove those bylaws which do not conform to the law. 1972 Op. Att'y Gen. No. 72-109 (decided under former Code 1933, § 25-104).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d, Corporations, §§ 96, 170, 171.

**C.J.S.** — 12 C.J.S., Building and Loan Associations, § 13.

#### 7-1-635. Procedures for department.

(a) The department shall, in its discretion, approve or disapprove of proposed amendments to the articles or to the bylaws within 90 days after they are submitted by the credit union and within that time shall so advise the Secretary of State and credit union in writing of its approval or disapproval.

(b) If the department should disapprove any articles or proposed amendments to articles or bylaws, it shall state the reasons for its disapproval. The subscribers or credit union shall have reasonable time, not more than 90 days from the date of disapproval or such additional time as the department may allow, to correct any matters causing its disapproval. If such matter is corrected, the department shall then advise the Secretary of State and credit union in writing of its approval or the credit union alone in writing of its approval in the case of amendment of the bylaws.

(c) Final action by the department in approving or disapproving articles or amendments thereto or to the bylaws shall be conclusive, except that it may be subject to judicial review under Code Section 7-1-90. (Ga. L. 1967, p. 595, § 4; Code 1933, § 41A-3006, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 22.)

## OPINIONS OF THE ATTORNEY GENERAL

Department may not disapprove bylaws which fully comply with Title 7, Article 3, Part 1. — Superintendent (now commissioner) may not disapprove a bylaw which fully complies with O.C.G.A. Title 7, Article

3, Part 1; it may only disapprove those bylaws which do not conform to the law. 1972 Op. Att'y Gen. No. 72-109 (decided under former Ga. L. 1967, p. 595).

## RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Corporations, § 119.

**7-1-635.1. Out-of-state credit unions.**

(a) A credit union organized in another state may conduct business and establish a place of business in this state with the approval of the department. The department must find that the out-of-state credit union:

(1) Is a credit union organized under laws of a state other than the State of Georgia or of the United States, which state grants similar authority to credit unions organized under the laws of this state;

(2) Is financially solvent and operates in conformance with the laws and regulations of its charter jurisdiction;

(3) Has deposit insurance comparable to that required for credit unions chartered in this state; and

(4) Needs to establish a place of business in this state to serve adequately its members in this state.

(b) The out-of-state credit union must agree to:

(1) Grant loans at rates not in excess of the rates permitted for credit unions incorporated under the laws of Georgia;

(2) Comply with the same consumer protection provisions that credit unions incorporated under this chapter must obey; and

(3) Designate and maintain an agent for the service of process in this state.

(c) The department may examine the operations of any out-of-state credit union for the purpose of determining that the scope of its activities does not exceed that allowed pursuant to this chapter and that the facility is otherwise operating in compliance with the applicable laws of this state. The department may by regulation establish minimum requirements for the maintenance of books and records in sufficient form to enable the department to carry out its responsibilities under this Code section.

(d) The department may enter into cooperative and reciprocal agreements with the credit union regulatory authority of any government for the

periodic examination of credit union offices and facilities of any kind located within this state and may accept reports from such authorities in lieu of conducting its own examination for compliance with the laws of this state.

(e) A credit union which is approved under this Code section shall be exempt from the requirements of Article 15 of Chapter 2 of Title 14. (Code 1933, § 41A-3008, enacted by Ga. L. 1981, p. 753, § 1; Ga. L. 1989, p. 1257, § 23.)

**Code Commission notes.** — Pursuant to substituted for “do” in subsection (c) of the Code Section 28-9-5, in 1989, “does” was Code section.

### **7-1-636. Effect on articles and duration of existing credit unions.**

(a) Nothing in this chapter shall be construed to impair the validity of the articles of a credit union existing on April 1, 1975.

(b) Each credit union existing on April 1, 1975, shall have perpetual duration unless its articles are amended under this chapter to provide for a limited period of duration. (Code 1933, § 41A-3007, enacted by Ga. L. 1974, p. 705, § 1.)

## **PART 2**

### **OPERATION AND REGULATION**

### **7-1-650. Powers.**

A credit union shall have, in addition to the powers common to all corporations under the laws of this state, the following powers:

(1) It may receive funds from its members in the form of shares and deposits on accounts or as evidenced by certificates of deposit issued by the credit union but shall not have the power to offer third-party payment services except as authorized under Code Section 7-1-670;

(2) It may receive passbook savings deposits from nonmembers in such manner as the bylaws may provide, but such deposits may not be subject to check and may not bear a greater rate of interest than the rate of interest paid to members for the same class of deposit;

(3) It may make loans to members through its credit committee or authorized employees pursuant to Code Section 7-1-658;

(4) It may also invest, through its board of directors, funds not used in loans to members, in the following manner:

(A) In obligations of the United States, including bonds and securities upon which payment of principal and interest is fully



guaranteed by the United States; obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, or any corporation designated in Section 846 of Title 31 of the United States Code as a wholly owned government corporation; or in obligations, participations, or other instruments of or issued by or fully guaranteed as to principal and interest by the Federal National Mortgage Association or the Government National Mortgage Association;

(B) In general and direct obligations of the State of Georgia, its counties, districts, and municipalities which have been validated as provided by law, if no more than 25 percent of the shares and deposits of a credit union shall be invested in the obligations of any one such obligor;

(C) In loans to other credit unions, provided the loans do not exceed 10 percent of the shares, deposits, and surplus of the investing credit union;

(D) By depositing its funds in banks, building and loan associations, savings and loan associations, and credit unions; by purchasing certificates of deposit and savings certificates which such financial institutions are authorized to issue; and by selling or purchasing federal or correspondent (daily) funds or loan participations through such financial institutions; subject to limitations prescribed in regulations issued by the department; and

(E) In any other types of investments authorized by the department, including commercial paper, provided such investments shall not, in the aggregate, exceed 10 percent of the shares, deposits, and surplus of the investing credit union. In lieu of the foregoing limitation, any credit union may invest up to 15 percent of its equity capital as defined by the department in authorized investments issued by any single obligor;

(5) It may borrow from any source, but the total of such borrowings shall at no time exceed 50 percent of paid-in shares, deposits, and surplus. The department may, notwithstanding the other provisions of this Code section, temporarily waive the requirements of this paragraph to permit an individual credit union to borrow for emergency purposes;

(6) It may undertake with the approval of the department other activities which are not inconsistent with this chapter or regulations adopted pursuant thereto either directly, through a subsidiary corporation, or in cooperation with other credit unions;

(7) It may organize and engage in business without having any stated amount of capital subscribed or paid in other than that derived from the subscribers' qualifying shares, may commence business with only such

capital authorized and paid in as may be provided in its bylaws, and may provide for the payment and withdrawal thereof as and in the manner provided by its bylaws;

(8) It may purchase, hold, and convey real estate for the following purposes only:

(A) Such real estate as shall be necessary for the convenient transaction of its business, subject to the prior approval of the department;

(B) Such real estate as shall be conveyed to it in satisfaction of debt previously contracted in the course of its business; and

(C) Such real estate as it shall purchase at sales under judgments, decrees, or mortgage foreclosures pursuant to mortgages or security deeds held by it;

(9) No real estate acquired in the cases provided for by subparagraphs (B) and (C) of paragraph (8) of this Code section and no real estate which has ceased to be used as credit union premises shall be held for a longer period than five years, unless the time shall be extended by the department. Properties, other than real estate, which are acquired in satisfaction of debts previously contracted and which a credit union is not otherwise authorized to own shall be held for no longer than six months unless such time period is extended by the department. Disposition of such property may be financed by the credit union without the advance of additional funds irrespective of the purchasers' membership in the credit union and of ordinarily applicable collateral margin requirements;

(10) It may provide through an amendment to its bylaws which shall be approved by two-thirds of its membership present and voting as otherwise provided in this part for the elimination or limitation of the personal liability of a director to the members in their capacity as shareholders of the credit union to the same extent as a bank or trust company operating under the provisions of this chapter. (Ga. L. 1925, p. 165, § 8; Code 1933, § 25-105; Ga. L. 1956, p. 742, § 1; Ga. L. 1968, p. 465, § 3; Code 1933, § 41A-3101, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1979, p. 417, § 1; Ga. L. 1981, p. 1244, § 4; Ga. L. 1987, p. 1586, §§ 12-14; Ga. L. 1989, p. 1211, § 12; Ga. L. 1990, p. 300, § 1; Ga. L. 1999, p. 674, § 26.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1987, "subparagraphs (B) and (C) of paragraph (8)" was substituted for "subparagraph (8)(B) and (C)" in the first sentence of paragraph (9).

Pursuant to Code Section 28-9-5, in 1988, in paragraph (7), a correction was made in the word "business" the second time it appears.

## JUDICIAL DECISIONS

**Credit union may accept security deed as loan collateral.** — A credit union has authority to accept title to real estate in the form of

a security deed as collateral for loans which it makes. *Cole v. Georgia Cent. Credit Union*, 243 Ga. 60, 252 S.E.2d 485 (1979).

## OPINIONS OF THE ATTORNEY GENERAL

**Credit union cannot legally function as dues collection agent for labor union.** — The legislature did not intend to grant credit unions any powers that were not necessary for or incidental to performing traditional credit union functions. Collection of dues on behalf of labor union is not necessary for or incidental to performing traditional credit union functions; therefore, a credit union cannot legally function as a dues collection agent for a labor union. 1976 Op. Att'y Gen. No. 76-119.

**Loan to nonmember may constitute investment in authorized obligation.** — Former Code 1933, § 41A-3101 (see O.C.G.A. § 7-1-650) implied that a credit union may invest in authorized obligations irrespective of whether the obligation constitutes a loan

to a nonmember. 1976 Op. Att'y Gen. No. 76-12.

**Guaranteed portion of small business administration loans are legal investments.** — The guaranteed portion of small business administration loans are obligations upon which payment of principal and interest is fully guaranteed by the United States and are therefore legal investments under former Code 1933, § 41A-3101 (see O.C.G.A. § 7-1-650). 1976 Op. Att'y Gen. No. 76-12.

Former Code 1933, § 41A-3101 (see O.C.G.A. § 7-1-650) prevents a credit union from investing in United States government guaranteed participation in small business administration loans. 1976 Op. Att'y Gen. No. 76-12.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 4 et seq., 189.

**C.J.S.** — 12 C.J.S., Building and Loan Associations, §§ 49-55.

**ALR.** — Power of savings bank or similar institution to provide checking facilities or negotiable orders of withdrawal (NOW) to customers, 64 ALR3d 1314.

## 7-1-651. Membership; shares.

(a) The membership of the credit union shall consist of the initial subscribers and such other persons within the field of membership as may have subscribed to one share and have paid for same together with the required entrance fee and complied with all other requirements contained in the bylaws. No subscriber or other member shall hold more than one share out of any class of shares. The bylaws may provide for separate classes of shares for borrowers and depositors and for the par value of each share for each class but in no event shall the par value be less than \$5.00.

(b) Societies, associations, partnerships, and corporations composed of persons who are eligible for membership may be admitted to membership in the same manner and under the same conditions as such persons.

(c) A person or corporation who leaves the field of membership may be permitted to retain his membership in the credit union at the discretion of the board of directors. (Ga. L. 1925, p. 165, §§ 1, 9; Code 1933, §§ 25-101,



25-108; Code 1933, § 41A-3102, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1985, p. 823, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Former Code 1933, §§ 25-101, 25-108, and 25-109 (see O.C.G.A. §§ 7-1-630, 7-1-651, and 7-1-653) indicate that each credit union has complete control over membership, and that eight persons could form a credit union and limit membership to the original eight incorporators. 1948-49 Op. Att’y Gen. p. 434.

RESEARCH REFERENCES

Am. Jur. 2d. — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 4 et seq., 189. C.J.S. — 12 C.J.S., Building and Loan Associations, §§ 31, 32, 45.

7-1-652. Joint, minor, and trust shares and deposits; preferred capital base shares.

(a) A share may be issued and deposits received jointly in the names of a member and a nonmember with right of survivorship, but no joint tenant shall be permitted to vote, obtain loans, or hold office unless he is within the field of membership and is a qualified member.

(b)(1) A minor shall be allowed to have deposits in a credit union in his own name, and the deposits made by the minor shall not be subject to the control of his parent, guardian, or trustee. A minor may have third-party payment accounts. A receipt or acquittance signed by such a minor depositor shall be a valid and sufficient release and discharge of such credit union for any payment of any deposit to such minor. In the transactions involving payments to third parties out of the minor’s account, the payment of an order of the minor shall be a valid and sufficient release and discharge of the credit union for any payment of such funds from the minor’s account. This subsection shall continue to include, without limitation:

(A) Deposits in such credit unions by a minor with one or more adults or other minors, as party to and with the same effect as a multiple-party account under Article 8 of this chapter;

(B) The rental to a minor by said credit unions of a safe-deposit box or other receptacle for the safe deposit of property from such minor (and the receipt of any such property), individually or jointly with one or more adults; and

(C) The dealing with a minor by said credit unions with respect to such a deposit account, third-party payment account, or safe-deposit agreement without the consent of a parent or guardian and with the same effect as though the minor were an adult.

(2) Any action of the minor with respect to such deposit account, third-party payment account, or safe-deposit agreement shall be binding on the minor with the same effect as though the minor were an adult.

(c) In addition to its regular shares, a credit union may offer to its members "preferred capital base" shares when permitted by its bylaws. Such shares may be held without limit, shall be subject to the following restrictions, and may entitle the holder to the following rights and preferences:

- (1) Such shares shall have no par value;
- (2) Such shares shall be redeemed only at a stated maturity of not less than one year or within ten days of such maturity;
- (3) Such shares shall be transferable on the books of the credit union so long as the acquiring person is a member of the credit union;
- (4) Such shares may have a preference on the payment of dividends and interest up to 2 percent over the dividend rate paid to members on regular shares and deposits or such higher rates as approved by the credit union members and the department. Any such preference shall be fixed at the time of issuance of the shares; and
- (5) Such shares shall be subordinate to claims of depositors and other creditors in the event of liquidation of the credit union but shall rank ahead of the claims of regular shares. (Ga. L. 1925, p. 165, § 17; Code 1933, § 25-111; Code 1933, § 41A-3103, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1244, § 5; Ga. L. 1985, p. 823, § 2; Ga. L. 1986, p. 458, § 9; Ga. L. 2003, p. 843, § 8.)

**The 2003 amendment**, effective July 1, 2003, in subsection (c), added "or such higher rates as approved by the credit union members and the department" at the end of the first sentence in paragraph (c)(4), deleted former paragraph (c)(5) which read: "Such shares shall be entitled to vote as a class in any action to merge, consolidate, or voluntarily dissolve the credit union;"; deleted former paragraph (c)(6) which read: "Such shares may be accorded the right to vote as a class in the election of directors for the purpose of electing directors representing the class, provided that the number of such directors shall not exceed one-third of the number elected by the holders of regular shares;"; redesignated former paragraph (c)(7) as present paragraph (c)(5), deleted former paragraph (c)(8) which read: "In the event of redemption, such shares may be entitled to receive a pro rata portion of the retained earnings, after the payment of dividends and interest, accumulated by the credit union during the most recent whole

calendar year, not in excess of five years, in which the shares were outstanding. Such pro rata portion shall be determined by taking the ratio of the shares being redeemed to the total number of preferred capital base shares outstanding on the date of redemption. The portion of retained earnings available for redemption under this paragraph and the right thereto shall be fixed at the time of issuance of the shares but shall not exceed 50 percent;"; and deleted former paragraph (c)(9) which read: "Where accorded voting rights, whether by statute or in the bylaws of the credit union, such rights shall be on a basis of one vote for each \$1,000.00 or fraction thereof paid into the credit union for such shares."

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2003, "and" was added following the semicolon at the end of paragraph (c)(4).

**Cross references.** — Multiple-party accounts, § 7-1-810 et seq.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 4 et seq., 189.

**C.J.S.** — 12 C.J.S., Building and Loan Associations, § 46.

**7-1-653. Expulsions and withdrawals; disposition of deposits, interest, shares, or dividends.**

At any regular or called meeting of the members, by a two-thirds' vote of those present, the members may expel from the credit union any member thereof. A member may withdraw from a credit union and a nonmember may withdraw deposits as provided in this Code section by filing a written notice of such intention. All deposits of an expelled or withdrawing member or nonmember with any interest accrued shall be paid to such member or nonmember, subject to 60 days' notice, after deducting any amounts due to the credit union by such member or nonmember. A credit union, upon the resignation or expulsion of a member, shall cancel the share, deposits, or dividends or interest due thereon and may apply the withdrawal value of such funds toward the liquidation of such member's indebtedness. Said expelled or withdrawing member or nonmember shall have no further right in said credit union or to any of its benefits, but such expulsion or withdrawal shall not operate to relieve said member or nonmember from any remaining liability to the credit union. (Ga. L. 1925, p. 165, §§ 16, 21; Code 1933, §§ 25-109, 25-110; Code 1933, §§ 41A-3104, 41A-3105, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1244, § 6; Ga. L. 1982, p. 3, § 7.)

## OPINIONS OF THE ATTORNEY GENERAL

**Credit unions have complete control over membership.** — Former Code 1933, §§ 25-101, 25-108, and 25-109 (see O.C.G.A. §§ 7-1-630, 7-1-651, and 7-1-653 indicate that each credit union has complete control over

membership, and that eight persons could form a credit union and limit membership to original eight incorporators. 1948-49 Op. Att'y Gen. p. 434.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 4 et seq., 189.

**C.J.S.** — 12 C.J.S., Building and Loan Associations, §§ 47-51.

**7-1-654. Capital; right to offset loans, dues, and fines.**

The capital of the credit union shall consist of the payments that have been made to it by the members on their qualifying shares. A credit union shall have a lien on a member's share and deposits and on dividends or interest payable thereon for and to the extent of any loan made by it to such member and of any dues and fines payable to it by such member. (Ga. L. 1925, p. 165, § 16; Code 1933, § 25-110; Code 1933, § 41A-3105, enacted by Ga. L. 1974, p. 705, § 1.)



## RESEARCH REFERENCES

C.J.S. — 12 C.J.S., Building and Loan Associations, §§ 43, 44.

**7-1-655. Boards of directors; credit and supervisory committees; officers; oaths of officials; removal from office.**

(a) At the first annual meeting the members shall elect from among their number a board of directors and at each annual meeting thereafter shall elect successors to the members of the board of directors whose terms of office expire at such annual meeting.

(b) Except as this Code section permits the bylaws of a credit union to provide otherwise, members of the board of directors elected at the first annual meeting shall serve until the next annual meeting and until their successors are elected and qualified. A credit union may in its bylaws provide for staggered elections for members of the board of directors; but in that event the bylaws shall provide that as nearly as possible one-third of the board shall be elected at each annual meeting.

(c) At the organizational meeting and at its first meeting after each annual meeting of the members, the board of directors shall appoint a supervisory committee, credit committee, chairman, president, secretary, and such other officers consistent with the bylaws as the board deems desirable. No member of the supervisory committee may serve as a member of the credit committee or as an officer.

(d) The chairman of the credit and supervisory committees shall be appointed by the board from among its number. Both the credit and supervisory committees shall be accountable to the board and members of such committees may be removed by the board.

(e) Officers and the committee members elected or appointed at the organizational meeting shall serve until the first annual meeting. Thereafter, the terms of such persons shall be until their successors are chosen or have duly qualified. An officer elected or appointed to fill an unexpired term shall be elected or appointed for the balance of that term.

(f) All members of the board and all officers and committee members shall be sworn to perform faithfully the duties of their several offices in accordance with this chapter and the bylaws or as otherwise lawfully established. The oaths shall be subscribed in writing and a copy thereof shall be retained in the minutes of the meetings of the board.

(g) Directors may be removed from office as provided in Code Section 7-1-485. (Ga. L. 1925, p. 165, § 12; Code 1933, § 25-112; Ga. L. 1962, p. 74, § 1; Code 1933, § 41A-3106, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 1681, § 3; Ga. L. 1981, p. 1244, § 7; Ga. L. 1989, p. 1211, § 13.)

**7-1-656. Duties of directors; meetings; applicability of Code Section 7-1-490.**

(a) The board of directors shall be responsible for the affairs, funds, and records of the credit union and shall meet as often as necessary, but at least once during ten different months of each calendar year. Unless the bylaws specifically reserve any or all of the duties to the members, it shall be the special duty of the directors:

(1) To act upon all applications for membership;

(2) To determine from time to time rates of interest and dividends which shall be allowed on deposits and charged on loans consistent with this article and other applicable laws and to authorize any interest refunds on such classes of loans and under such conditions as the board prescribes;

(3) To fix the amount of the fidelity bond which shall be required of all officers, employees, agents, or members having custody of funds, properties, or records; provided, however, that the amount of such fidelity bond shall not be less than such minimum requirements as shall be prescribed by regulation of the department and shall be in such form as may from time to time be approved by the department;

(4) To fix within the restrictions imposed by statute the maximum amount of deposits which may be made by and the maximum amount that may be loaned to any one member;

(5) To fill vacancies on the board of directors, credit committee, and supervisory committee until the election and qualification of a successor;

(6) To have charge of the investment of funds of the credit union other than loans to members within the restrictions imposed by statute; and

(7) To perform such other duties as the members may from time to time authorize.

(b) The provisions of Code Section 7-1-490 relative to the responsibilities of directors and officers and the delegation of investment decisions shall be applicable to the duties of directors, credit and supervisory committee members, and officers of credit unions. (Ga. L. 1925, p. 165, § 13; Code 1933, § 25-113; Ga. L. 1956, p. 742, § 2; Ga. L. 1968, p. 465, § 6; Code 1933, § 41A-3107, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 32; Ga. L. 1981, p. 1244, § 8; Ga. L. 1989, p. 1211, § 14; Ga. L. 2002, p. 1220, § 6.)

**The 2002 amendment**, effective July 1, 2002, in paragraph (a)(5), substituted a comma for “and” and inserted “, and supervisory committee”.

## RESEARCH REFERENCES

**C.J.S.** — 12 C.J.S., Building and Loan Associations, §§ 27-29.

**7-1-657. Duties of supervisory committee; inspections; comprehensive annual audits.**

(a) The supervisory committee shall be responsible for securing a comprehensive audit of the credit union at least once each year. The committee may employ the services of an independent accountant or firm of such accountants or the internal auditors of any sponsoring group, concern, or association of credit unions to make such comprehensive audit. The results of the audit shall be submitted to the board and the committee shall present a summary of the results of the audit to the membership. The committee shall make recommendations to the board for the correction of any deficiencies disclosed by the audit. The annual audit shall include a confirmation of the share, deposit, and loan accounts of the members and such other procedures as the department might require. The annual audit shall be preserved with the records of the credit union and a copy shall be filed with the department.

(b) The supervisory committee, from time to time, may conduct or cause to be conducted other audit functions or reviews of operations or may make or cause to be made an inspection of the assets and the liabilities of the credit union. The committee shall report the results of any such reviews to the board of directors and shall be responsible for making specific recommendations to the board regarding any unsafe, unsound, or unauthorized activities discovered. (Ga. L. 1925, p. 165, § 15; Code 1933, § 25-114; Code 1933, § 41A-3108, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1244, § 9; Ga. L. 2002, p. 1220, § 7.)

**The 2002 amendment**, effective July 1, 2002, rewrote this Code section.

**7-1-658. Loans.**

(a) Credit unions may lend money to their members at reasonable rates of interest, which shall not exceed 1 1/4 percent each month on the unpaid balance, or such greater rates as shall be authorized for other financial institutions for such purposes as may be approved by the credit committee.

(b) Loans shall be supervised as follows:

(1) The credit committee shall have the general supervision of all loans to members. The credit committee shall hold such meetings as the business of the credit union may require and not less frequently than once each quarter to consider applications for loans. Reasonable notice of such meetings shall be given to all members of the committee. Actions



of the credit committee shall be reported to the board in such form as the board shall prescribe at each regular meeting of the board. No loan shall be made unless it is approved by a majority of the entire committee, except as provided in this Code section;

(2) The credit committee may appoint one or more employees to be loan officers and delegate to such persons the power to approve or disapprove loans subject to such limitations or conditions as the credit committee prescribes. Records of loans approved shall be maintained in such form as the credit committee shall prescribe and shall be made available to the credit committee upon request. All loans in excess of 50 percent of a credit union's maximum loan limitation or such lower limit as the credit committee shall establish shall be acted upon by the credit committee. The credit committee may not appoint more than one of its members to be a loan officer. No person shall have the authority to disburse funds of the credit union for any loan which has been approved by such person;

(3) In lieu of a credit committee, the board of directors may appoint one or more loan officers and delegate to such persons the power to approve or disapprove loans subject to such limitations or conditions as the board prescribes. All other duties of the credit committee as described in this article shall become the duties of the board of directors. Records of loans approved shall be maintained by the loan officers in such form as the board shall prescribe and a listing of all loans made, including the name of the borrower and the amount of the loan, shall be submitted to the board at each meeting; and

(4) Members may appeal a credit decision made by a loan officer to the credit committee or to the board if denied by the credit committee. Where there is no credit committee, appeal shall be made to the board.

(c) Loans may be made to officers, directors, and committee members of the credit union under the same general terms and conditions as to other members of the credit union; provided, however, that no officer, director, committee member, or employee shall participate in approving any loan in which he or she has a direct or indirect financial interest. The approval of all loans to officers, directors, committee members, and employees of the credit union shall be reported to the board of directors at its next meeting.

(d) No credit union shall be authorized to lend to any individual borrower on an unsecured loan more than 1 percent of the first \$100,000.00 of its deposits and shares plus one-fourth of 1 percent of its deposits and shares over \$100,000.00. No credit union shall be authorized to lend to any individual borrower on a secured loan more than 10 percent of the first \$100,000.00 of its deposits and shares plus 4 percent of the next \$1 million of its deposits and shares plus 2 percent of its deposits and shares over \$1.1 million. Deposits and shares reflected in the statement of

condition on the last calendar day of the preceding quarter, to the nearest \$100,000.00, shall be used to establish loan limits for the subsequent calendar quarter, provided that where a credit union has less than \$1 million in total shares and deposits, the nearest \$1,000.00 shall be used to establish these limits. Any credit union may make loans up to \$200.00 regardless of the amount of its shares and deposits. The amount loaned to any one borrower on an unsecured basis when added to the amount loaned to any one borrower on a secured basis shall not exceed the limitation set forth in this subsection for secured loans, such limitation being the maximum loan limit of the credit union.

(e) For purposes of subsection (d) of this Code section:

(1) "Borrower" means the member who actually received the proceeds from a loan and shall not include any obligation which he may incur by being an endorser, guarantor, comaker, or similar obligor for another borrower;

(2) "Secured loan" means a loan for which adequate collateral is given. A secured loan may include a loan for which there is an endorser, guarantor, comaker, or similar obligor.

(f) Approval of loans by the credit committee shall be evidenced, prior to disbursement of the loan proceeds, by a writing signed by a committee member stating that the committee has approved the loan. If the board appoints loan officers in lieu of a credit committee, it shall establish policies for approval of loans by those loan officers. (Ga. L. 1925, p. 165, §§ 14, 18; Code 1933, §§ 25-115, 25-116; Ga. L. 1962, p. 74, § 2; Ga. L. 1968, p. 465, §§ 4, 5; Code 1933, § 41A-3109, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 1681, §§ 4, 5; Ga. L. 1981, p. 1244, § 10; Ga. L. 1994, p. 1780, § 2; Ga. L. 2004, p. 458, § 5.)

**The 2004 amendment**, effective July 1, 2004, deleted "or an authorized employee" following "credit committee" at the end of subsection (a); in subsection (b), substituted "each quarter" for "a month" in the second sentence of paragraph (b)(1), in paragraph (b)(2), inserted "to be loan officers" in the first sentence, added the fourth sentence, and deleted the last sentence which read: ". Not more than one member of the credit committee may be appointed as provided in this paragraph", substituted the present provisions of paragraph (b)(3) for the former provisions which read: "An applicant for a loan may appeal to the directors from the decisions of the credit committee, if it is so provided in the bylaws and in the way and

manner therein provided.", and added paragraph (b)(4); and, in subsection (f), in the first sentence, deleted "either" following "loans by", deleted "or an authorized employee" following "committee" twice and following "member", and added the second sentence.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2004, "\$1 million" was substituted for "\$1,000,000.00" and "\$1.1 million" was substituted for "\$1,100,000.00" in two places in subsection (d).

**Law reviews.** — For article discussing methods of computation of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978).

## OPINIONS OF THE ATTORNEY GENERAL

**Credit unions may make loans to members only.** — Credit unions may make loans to and exact interest rate permitted by former Code 1933, § 41A-3109 (see O.C.G.A. § 7-1-658) from members only. 1975 Op. Att'y Gen. No. 75-2.

**Loans by banks.** — Authority contained in former Code 1933, § 41A-3109 (see O.C.G.A. § 7-1-658) was limited to a designated type of loan, a loan by a credit union to a member, or shareholder; thus if a bank possesses any authority under former Code 1933, § 41A-1313 (see O.C.G.A. § 7-1-292) similar to that of credit unions under this section, the authority extends only to loans to shareholders of the bank. 1975 Op. Att'y Gen. No. 75-2.

**Loans exceeding unsecured debt limit must be secured; secured debt limit may not be exceeded.** — All amounts loaned by credit unions in excess of unsecured debt limits established by subsection (d) of former Code 1933, § 41A-3109 (see O.C.G.A. § 7-1-658) must be secured by adequate collateral and in no event may that

secured debt limit be exceeded. 1975 Op. Att'y Gen. No. 75-67.

**Subsection (a) of former Code 1933, § 41A-3109 (see O.C.G.A. § 7-1-658) was not violated by investment in small business administration guaranteed participations.** 1976 Op. Att'y Gen. No. 76-12.

Neither former Code 1933, § 41A-3109 (see O.C.G.A. § 7-1-658) nor former Code 1933, § 41A-3101 (see O.C.G.A. § 7-1-650) prevented a credit union from investing in United States government guaranteed participations in small business administration loans. 1976 Op. Att'y Gen. No. 76-12.

**Section does not give authority to banks.** — Former Code 1933, § 41A-1313 (see O.C.G.A. § 7-1-658) did not permit banks to charge rates of interest authorized to other organizations by virtue of a special charter, including authority under former Code 1933, § 41A-1309 (see O.C.G.A. § 7-1-658) establishing an interest rate which credit unions were authorized to exact. 1975 Op. Att'y Gen. No. 75-2.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 4 et seq., 189.

**C.J.S.** — 12 C.J.S., Building and Loan Associations, §§ 81, 82, 90, 98.

**ALR.** — Enforceability of provision in loan commitment agreement authorizing lender to charge standby fee, commitment fee, or similar deposit, 93 ALR3d 1156.

**7-1-659. Entrance fees; reserves; exclusion of state and federal credit union reserves from tax calculations.**

(a) A credit union may charge entrance fees as provided in the bylaws. All such fees shall, after payment of organizational expense, be known as reserve income and shall be added to the regular reserve of the credit union.

(b) Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. There shall be set aside from that amount as an allowance for loan and lease losses, sums adequate to cover such anticipated losses, based on the risk characteristics of the loan portfolio.

(c) All credit unions shall be subject to the capital and reserve requirements of Part 702 of the Rules and Regulations of the National Credit Union Administration, known as Prompt Corrective Action. Credit unions that are less than ten years old shall operate according to a business plan



which shall contain requirements for reserves and which shall be approved by the department. The department shall have the discretion to require additional capital and reserves to assure the safety and soundness of any credit union.

(d) In addition to regular reserves, special reserves to protect the interest of members shall be established when found necessary in any special case by the board of directors of the credit union or by the department.

(e) All reserves of credit unions or federal credit unions established in accord with generally accepted accounting principles or upon the specific direction of the department or any federal regulatory body or for the purpose of complying with any conditions lawfully imposed by the department or any federal regulatory body shall not be considered as surplus or undivided profits of any credit union for tax purposes. (Ga. L. 1925, p. 165, § 19; Code 1933, § 25-117; Ga. L. 1956, p. 742, § 3; Code 1933, § 41A-3110, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2002, p. 1220, § 8.)

**The 2002 amendment**, effective July 1, 2002, inserted "regular" in the second sentence of subsection (a); rewrote subsections (b) and (c); deleted "such" preceding "regular" in subsection (d); deleted former subsection (e), which read: "For the purpose of this Code section, the term 'risk assets' shall mean all assets of the credit union except:

"(1) Cash on hand;

"(2) Deposits made pursuant to subparagraph (4)(D) of Code Section 7-1-650;

"(3) Assets which are insured by, fully guaranteed as to principal and interest by, or due from the United States government, its agencies, the Federal National Mortgage Association, or the Government National Mortgage Association;

"(4) Loans to students under Title IV, Part

B of the Higher Education Act of 1965 or a similar state insurance program;

"(5) Loans insured under Title I of the National Housing Act by the Federal Housing Administration;

"(6) Loans to other credit unions;

"(7) Shares or deposits in other credit unions;

"(8) Investments authorized by this article;

"(9) Prepaid expenses;

"(10) Accrued interest on nonrisk investments;

"(11) Furniture and equipment; and

"(12) Land and buildings."; redesignated former subsection (f) as present subsection (e); and substituted "principles" for "procedures" near the middle of subsection (e).

#### RESEARCH REFERENCES

**C.J.S.** — 12 C.J.S., Building and Loan Associations, § 32.

#### 7-1-660. Dividends; interest.

At such intervals and for such periods as the board of directors may authorize, dividends and interest from retained earnings may be declared at such rates as are determined by the board, provided that such dividends and interest shall not be paid until provision for the transfer to the required reserves has been made. Dividends or interest in excess of 90 percent of a credit union's net earnings before dividends in the fiscal year preceding the

year in which a dividend or interest is proposed shall be approved in writing by the department prior to payment. The proposed dividend or interest may be paid after approval by the department upon its determination that such payment would be in the continued best interest of the credit union, would promote its stability, and would not impair its ability to repay its creditors other than its shareholders and depositors. (Ga. L. 1925, p. 165, § 13; Code 1933, § 25-113; Ga. L. 1956, p. 742, § 2; Ga. L. 1968, p. 465, § 6; Code 1933, § 41A-3111, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 33; Ga. L. 1981, p. 1244, § 11.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 19 Am. Jur. 2d, Corporations, §§ 836, 837.

**C.J.S.** — 12 C.J.S., Building and Loan Associations, § 41.

#### 7-1-661. Fiscal year; special meetings of members; voting and proxies.

The credit union fiscal year shall end at the close of business on December 31. Special meetings of the members may be held by order of the directors or on written request of 10 percent of the members. At all meetings a member shall have but one vote. No member may vote by proxy; but a society, association, partnership, or corporation having membership in the credit union may be represented by one person duly authorized by said society, association, partnership, or corporation to represent it. At any meeting the members may decide on any matter of interest to the credit union and may overrule the board of directors, provided the notice of the meeting shall have stated the question to be considered. (Ga. L. 1925, p. 165, § 11; Code 1933, § 25-121; Code 1933, § 41A-3112, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1244, § 12.)

#### RESEARCH REFERENCES

**C.J.S.** — 12 C.J.S., Building and Loan Associations, § 39.

#### 7-1-662. Taxes to which subject.

Credit unions shall not be subject to any tax except the ad valorem tax upon property imposed by the Constitution of this state unless made subject thereto by express provision of the law specifically naming credit unions and making them subject thereto. All ad valorem taxes against credit unions shall be assessed upon the value of their shares, including surplus and undivided profits, and not upon their assets, other than real estate; and the rate of taxation shall not exceed the rate of taxation imposed on banking corporations, provided that, so long as federal credit unions are exempt from the payment of the tax imposed under this Code section, state credit unions shall likewise be exempt. (Ga. L. 1925, p. 165, § 24; Code 1933,

§ 25-123; Ga. L. 1943, p. 279, § 2; Code 1933, § 41A-3113, enacted by Ga. L. 1974, p. 705, § 1.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Credit unions are exempt from Corporate Franchise Tax Act.** — State and Federal Credit Unions are exempt under present laws from taxes imposed under Corporate Franchise Tax Act. 1965-66 Op. Att'y Gen. No. 66-92 (decided under former Code 1933, §§ 25-101 and 25-123).

**Credit union purchases exempt from**

**Sales and Use Tax Act.** — Former Code 1933, § 41A-3113 (see O.C.G.A. § 7-1-662) being later in time than the Sales and Use Tax Act contained in Code 1933, Ch. 92-34A (see Art. 1, Ch. 8, T. 48) will exempt purchases of credit unions from taxes imposed by the Sales and Use Tax Act. 1974 Op. Att'y Gen. No. 74-136.

#### 7-1-663. Rules and regulations of department.

Without limitation on the authority conferred by Article 1 of this chapter, the department is authorized to make such rules and regulations not inconsistent with this article and other applicable statutes governing the operation of credit unions as it may consider reasonable and proper for the protection of all funds invested. (Code 1933, § 25-123.1, enacted by Ga. L. 1968, p. 465, § 1; Code 1933, § 41A-3114, enacted by Ga. L. 1974, p. 705, § 1.)

#### 7-1-664. Payment of deposits of deceased depositors in state and federal credit unions.

Reserved. Repealed by Ga. L. 1983, p. 661, § 2, effective July 1, 1983.

**Editor's notes.** — The former Code section was based on Ga. L. 1967, p. 595, § 6; Code 1933, § 41A-3115, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 34; Ga. L. 1976, p. 1388, § 4.

#### 7-1-665. Subsidiary offices.

A credit union shall not be prohibited from maintaining offices at locations other than its principal offices if the maintenance of such offices shall be reasonably necessary to furnish service to its membership. The establishment of additional offices shall be subject to the prior approval of the department upon application to it in such form as it may prescribe by regulation. (Code 1933, § 41A-3116, enacted by Ga. L. 1974, p. 705, § 1.)

#### 7-1-666. Deposit insurance requirements; public notices when deposits not properly insured.

(a) Every credit union shall be required to obtain deposit insurance satisfactory to the department before it may conduct business and accept deposits, except that credit unions which have had their deposit insurance



coverage withdrawn or canceled may, in the discretion of the department, continue to accept deposits, provided that, within six months after withdrawal or cancellation of insurance, such credit unions shall obtain deposit insurance written by an insurance company authorized to transact business in this state and acceptable to the department or by the National Credit Union Administration. The department may, in its discretion, for cause shown, extend the time limitation in which deposit insurance must be obtained.

(b) Deposit insurance required to be obtained in subsection (a) of this Code section need not be in excess of amounts insured by the National Credit Union Administration at the time the insurance is obtained; but, whenever the insurance coverage is, in the opinion of the department, less than amounts insured by the National Credit Union Administration, the credit union shall be required to post a sign in boldface print, in letters at least four inches high, at a conspicuous place near the entrance of such credit union, which states "Deposits Not Insured" or "Deposits Insured Up To (insert amount of deposit insurance)." Such wording shall also follow the name of the credit union wherever it is written or printed and shall be posted in writing which is easily legible in letters at least one inch high at each window or desk receiving deposits. (Code 1933, § 41A-3117, enacted by Ga. L. 1974, p. 705, § 1.)

**Cross references.** — For similar provisions relating to deposit insurance requirements for banks, § 7-1-244.

### **7-1-667. Mergers.**

(a) A credit union may, with the approval of the department and in accordance with such uniform rules and regulations as it shall make and promulgate, be merged with another credit union under the articles of such credit union, upon any plan agreed upon by the majority of the board of each credit union joining the merger and approved by not less than two-thirds of the members of each credit union present and eligible to vote at meetings called for that purpose. All property, property rights, and interests of the credit union so merging shall, upon merger, be transferred to and vested in the credit union under whose articles the merger is effected without deed, endorsement, or other instrument of transfer; and the debts and obligations of the credit union so merging shall be deemed to have been assumed by the credit union under whose articles the merger is effected; and thereafter the articles of the credit union so merging shall be void.

(b) The provisions of Article 8 of Chapter 4 of Title 14, relating to merger and consolidation, shall no longer be applicable to credit unions.

(c) For purposes of this Code section, the term "credit union" shall include a federal credit union. (Code 1933, § 41A-3118, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1980, p. 972, § 7.)

#### RESEARCH REFERENCES

C.J.S. — 12 C.J.S., Building and Loan Associations, §§ 146-148.

#### **7-1-668. Conversion of state and federal credit unions.**

(a) Any credit union operating in this state may convert into a federal chartered credit union, and any federal credit union may convert into a credit union organized under this chapter upon approval of the authority under whose supervision the converted credit union will operate and upon compliance with applicable federal laws as to a converted federal credit union and upon compliance with applicable state laws as to a converted credit union.

(b) The procedure for obtaining such approval and effecting the conversions in the case of a credit union shall be as follows:

(1) A meeting of the board of directors, either regular or special, shall be called for the purpose of voting on converting from a federal credit union to a credit union or from a credit union to a federal credit union. A majority of the board of directors shall adopt a resolution approving the contemplated conversion;

(2) A meeting, either regular or special, of the shareholders shall then be called for voting on the proposed conversion. Notice of said meeting shall be given in the manner prescribed in Code Section 7-1-6 and shall include a statement indicating that the proposed conversion will be considered at the meeting. Proof of giving of the notice shall be by the affidavit of the president of the credit union. A majority of the members present at this meeting shall then approve the proposed conversion;

(3) Within ten days after such approval of the conversion, the president or vice-president and treasurer shall file a verified copy of the resolution adopted by the board of directors with the state or federal authority under whose supervision the converting credit union is to operate.

(c) Upon the written approval of the department for conversions to credit unions and with the written approval of the administrator of the National Credit Union Administration for conversions to federal credit unions, the converting credit union shall then become a credit union under the laws of this state or the United States, as the case may be; and thereupon all assets shall become the property of the new credit union or federal credit union, as the case may be, subject to all existing liabilities, and every person

who was a member of the converting credit union shall be a member in the new credit union or federal credit union. (Code 1933, § 41A-3119, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 235 et seq.

**C.J.S.** — 12 C.J.S., Building and Loan Associations, § 145.

#### 7-1-669. Central credit union.

(a) A “central credit union” means a credit union which is organized to serve a field of membership which consists primarily of other credit unions operating pursuant to this chapter or the Federal Credit Union Act. A central credit union may be organized and operated under this chapter and subject to all provisions of this chapter which are not inconsistent with this Code section. Such credit union shall use the word “central” in its name.

(b) The field of membership of a central credit union shall include credit unions organized and operating under this chapter or under the Federal Credit Union Act. In addition, the field of membership may include:

(1) Members of credit unions which are members of the central credit union;

(2) Officials and employees of any organization or association of credit unions and of the central credit union;

(3) Except as limited in Article 1 of this chapter, employees of the department or of the National Credit Union Administration;

(4) Organizations and associations of persons or credit unions included in the foregoing;

(5) Persons who are:

(A) Members of a credit union that has entered into voluntary or involuntary dissolution; or

(B) Indebted to a credit union which has entered into voluntary or involuntary dissolution; or

(C) Nonmember depositors of a credit union which has entered into voluntary or involuntary dissolution; and

(6) Groups within a common bond which are determined by the commissioner to lack the potential membership required for approval of their own credit union.

(c) The central credit union may make loans to individuals who are members pursuant to paragraph (1) of subsection (b) of this Code section



only upon approval of the credit committee of the member credit union of which the individual is a member and to individuals who are members pursuant to paragraph (3) of subsection (b) of this Code section only upon reporting such loan to the appropriate supervisory authority.

(d) The commissioner may, in his discretion, approve greater borrowings than provided in this chapter when required to enable the credit union to meet its obligations to its members and otherwise assist its members during any emergency or hardship.

(e) A central credit union may:

(1) Make loans to other credit unions, but loans to any one credit union shall not exceed 10 percent of the shares, deposits, and surplus of the credit union borrower, without prior approval of the department;

(2) Purchase shares of and make deposits in other credit unions;

(3) Obtain or acquire the assets and liabilities of any credit union which enters into liquidation;

(4) Invest in and grant loans to associations of credit unions and to organizations chartered to provide service to credit unions; and

(5) Borrow money and accept deposits from any source.

(f) The commissioner may issue such special regulations as he or she may deem prudent or necessary to allow a central credit union to promote effectively the liquidity and sound financial management of its member credit unions without unduly endangering its own liquidity and sound financial condition. Such special regulations need not be applicable to all credit unions but may be applicable only to the central credit union. The central credit union shall maintain an adequate allowance for loan and lease losses in accordance with generally accepted accounting principles and such other reserves as may be required by the rules and regulations of the department.

(g) A central credit union shall have all the rights and powers of any other credit union organized under this chapter and the additional rights and powers specified in this Code section. (Code 1933, § 41A-3120, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2002, p. 1220, § 9.)

**The 2002 amendment**, effective July 1, 2002, in subsection (f), in the first sentence, inserted “or she” and substituted “a central” for “the central”, and substituted the present last sentence for “The central credit union shall be exempt from the provisions relating to the establishment of a regular reserve as set forth in Code Section 7-1-659 but, in lieu thereof, shall maintain a reserve fund as required by regulations promulgated

by the commissioner. Such regulations shall not call for a reserve fund or annual transfers to the reserve fund in excess of those required by Code Section 7-1-659.”; and deleted “, notwithstanding any limitations or restrictions found elsewhere in this chapter” following “section” at the end of subsection (g).

**U.S. Code.** — The Federal Credit Union Act, referred to in subsections (a) and (b) of

this section, is codified as 12 U.S.C. § 1751 et seq.

### **7-1-670. Third-party payment services.**

(a) Any credit union may apply to the department for permission to offer third-party payment services to its members. The department shall exercise its discretion in determining whether to approve such request but shall not grant its approval until it is satisfied that:

(1) The convenience and need of the membership will be served by the proposed change;

(2) There is reasonable promise of adequate support of the program in light of:

(A) The competition offered by existing financial institutions;

(B) The financial history of the credit union and its membership; and

(C) The opportunities for profitable employment of depositors' funds as indicated by the average demand for credit, the number of potential depositors, the volume of transactions, and stability of the common bond;

(3) The managerial resources, internal controls, and operating procedures of the credit union are sufficient to administer the program in a safe and sound manner; and

(4) The capital and reserves of the credit union are adequate in light of current economic conditions and asset quality of the credit union.

(b) A credit union meeting certain financial and managerial criteria specified by department rule, regulation, or policy shall be exempt from the need for prior approval. Prior notice of intent to offer third-party payment services will be provided to the department.

(c) Upon the commencement of third-party payment services, a credit union shall be subject to Code Sections 7-1-286, pertaining to real estate loans; 7-1-287, pertaining to investment securities; 7-1-288, pertaining to corporate stock and securities; 7-1-371, pertaining to legal reserve requirements; and rules and regulations of the department relating to the foregoing Code sections of law and shall not pay a greater rate of interest on third-party payment accounts than is allowed to be paid by commercial banks.

(d) Authority to offer third-party payment services may be suspended or revoked in accordance with Code Section 7-1-91. (Code 1933, § 41A-3121, enacted by Ga. L. 1979, p. 417, § 2; Ga. L. 1983, p. 602, § 19; Ga. L. 2001, p. 970, § 9.)

## ARTICLE 4

## SALE OF CHECKS OR MONEY ORDERS

**Administrative rules and regulations.** — Sale of money orders at nonbanking outlets, Official Compilation of Rules and Regula-

tions of State of Georgia, Rules of Department of Banking and Finance, Chapter 80-3-1.

## OPINIONS OF THE ATTORNEY GENERAL

**Intent of provisions on sale of checks or money orders** is to protect innocent members of public from financial injury resulting from default of check-issuing companies. 1977 Op. Att'y Gen. No. 77-12.

**Definition of check includes traveler's checks.** — While Ga. L. 1965, p. 81 (see O.C.G.A. Art. 4, Ch. 1, T. 7) makes no specific mention of traveler's checks, the definition of "check" would clearly include any arrangement such as traveler's checks. 1972 Op. Att'y Gen. No. 72-23 (decided under Ga. L. 1965, p. 81).

**A bank holding company wishing to issue traveler's checks in Georgia must comply with Ga. L. 1965, p. 81 (see O.C.G.A. Art. 4, Ch. 1, T. 7).** 1972 Op. Att'y Gen. No. 72-23 (decided under Ga. L. 1965, p. 81).

**Money transfer companies not subject to article absent issuance of check or instru-**

**ment to fund recipient.** — Money transfer companies are not subject to Sale of Checks Act unless there is issuance of a check or other instrument to recipient of funds disbursed; mere transmission of an instrument by the money transfer company to its agent is not "issuance of check" within meaning of former Code 1933, § 41A-3202 (see O.C.G.A. § 7-1-681). 1975 Op. Att'y Gen. No. 75-102.

**Georgia cannot restrict sales by federal credit unions of checks and money orders.** — Since federal credit unions are authorized by Congress, and their federal regulatory agency, the National Credit Union Administration, to sell negotiable checks and money orders to their members, it follows that Georgia may not restrict federal credit unions in their exercise of this power. 1978 Op. Att'y Gen. No. 78-56.

## RESEARCH REFERENCES

**ALR.** — Discharge of drawer or endorser of check by holder's acceptance thereof of something other than money, 87 ALR 442.

Lost or stolen travelers' checks, 110 ALR 976.

## 7-1-680. Definitions.

(a) As used in this article, the term or terms:

(1) "Check" means any check, money order, or any other instrument, order, or device for the payment or transmission of money or monetary value, whether or not it is a negotiable instrument under the terms of Article 3 of Title 11, relating to negotiable instruments. The term does not include a credit card voucher, letter of credit, or any other instrument that is redeemable by the issuer in goods or services.

(2) "Licensee" means a person duly licensed by the department pursuant to this article.

(3) "Monetary value" means a medium of exchange whether or not redeemable in money.



(4) “Money transmission” means engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means including, but not limited to, an order, wire, facsimile, or electronic transfer.

(5) “Sale” and “selling” mean the passing of title from the seller or his or her agent to a holder or remitter for a price or an agreement to transfer money or monetary value for a price.

(b) Other statutory definitions applying to this article are:

(1) “Delivery” as defined in paragraph (14) of Code Section 11-1-201.

(2) “Issue” as defined in paragraph (a) of Code Section 11-3-105.

(3) “Sale of checks” or “issuance of checks” shall include money transmission.

(4) “Signed” as defined in paragraph (39) of Code Section 11-1-201. (Ga. L. 1965, p. 81, § 2; Code 1933, § 41A-3201, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1984, p. 22, § 7; Ga. L. 1997, p. 143, § 7; Ga. L. 2003, p. 843, § 9.)

**The 2003 amendment**, effective July 1, 2003, in subsection (a), in paragraph (a)(1), inserted “, order, or device”, inserted “or monetary value”, and added the second sentence, substituted “person” for “corporation” in paragraph (a)(2), added paragraphs (a)(3) and (a)(4), redesignated the former provisions of paragraph (a)(3) as

present paragraph (a)(5), and, in present paragraph (a)(5), inserted “or her” and added “or an agreement to transfer money or monetary value for a price”; and, in subsection (b), added paragraph (b)(3) and redesignated former paragraph (b)(3) as present paragraph (b)(4).

### OPINIONS OF THE ATTORNEY GENERAL

**Essential characteristic of check.** — Essential characteristic of a check, whatever its form, is that it be used for payment or transmission of money. If a document is not so used, then it falls entirely outside regulatory purpose of former Code 1933, § 41A-3201 (see O.C.G.A. § 7-1-680). 1977 Op. Att’y Gen. No. 77-12.

**Discount coupons are not checks.** — Discount coupons, which enable purchasers to obtain merchandise for less than regular or advertised price, are not checks as that term

is used in former Code 1933, § 41A-3201 (see O.C.G.A. § 7-1-680). 1977 Op. Att’y Gen. No. 77-12.

**Definition of check includes traveler’s checks.** — While Ga. L. 1965, p. 81 (see O.C.G.A. § 7-1-680) makes no specific mention of traveler’s checks, the definition of check would clearly include any arrangement such as traveler’s checks. 1972 Op. Att’y Gen. No. 72-23 (decided under Ga. L. 1965, p. 81).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Financial Institutions, § 888. 11 Am. Jur. 2d, Bills and Notes, § 47 et seq. 67 Am. Jur. 2d, Sales, § 20 et seq.

**C.J.S.** — 10 C.J.S., Bills and Notes, § 5. 77 C.J.S., Sales, §§ 1, 2.

**7-1-681. License required.**

No person or corporation, other than a bank or trust company, a credit union, a savings and loan association, or a savings bank, whether state or federally chartered, the authorized agent of a licensee, or the United States Postal Service shall engage in the business of selling or issuing checks without having first obtained a license under this article. This restriction applies to any nonresident person or corporation that engages in this state in the business of selling or issuing checks through a branch, subsidiary, affiliate, or agent in this state. A license for the sale of checks or money orders shall also qualify as a license for the business of money transmission. (Ga. L. 1965, p. 81, § 3; Code 1933, § 41A-3202, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1985, p. 1131, § 1; Ga. L. 1986, p. 458, § 10; Ga. L. 1990, p. 362, § 1; Ga. L. 2003, p. 843, § 10.)

**The 2003 amendment**, effective July 1, 2003, deleted “but domiciled in this state” following “federally chartered” in the first sentence and added the last sentence.

**Law reviews.** — For note on 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 201 (1990).

**OPINIONS OF THE ATTORNEY GENERAL**

**Transmission of instrument by money transfer company to agent is not issuance of check.** — Money transfer companies are not subject to the Sale of Checks Act unless there is issuance of a check or other instrument to recipient of funds disbursed; mere transmis-

sion of an instrument by money transfer company to its agent is not issuance of a check within the meaning of former Code 1933, § 41A-3202 (see O.C.G.A § 7-1-681). 1975 Op. Att’y Gen. No. 75-102.

**RESEARCH REFERENCES**

**ALR.** — Power of savings bank or similar institution to provide checking facilities or

negotiable orders of withdrawal (NOW) to customers, 64 ALR3d 1314.

**7-1-682. Qualifications of licensees; investments required; obtaining conviction data.**

(a) In order to qualify for a license under this article, an applicant shall:

(1) Satisfy the department that it is financially sound and responsible and appears able to conduct the business of selling checks in an honest and efficient manner and with confidence and trust of the community; and

(2) Comply with the bonding requirements, furnish the statements, and pay the fees prescribed in this article. In the case of a money transmitter, the department may in its discretion require only a bond.

(b) In addition to the qualifications set forth in subsection (a) of this Code section, the department may require a licensee to maintain invest-

ments having an aggregate market value at least equal to the amount of outstanding checks issued or sold, or for money transmitters, equal to the outstanding orders to transmit but not yet paid for by the licensee pursuant to this article. The department may promulgate regulations establishing those investments which shall be deemed permissible investments for the purpose of complying with this subsection. Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding checks in the event of bankruptcy of the licensee.

(c) The department shall not issue such license if it finds that the applicant or any person who is a director, officer, partner, agent, employee, or substantial stockholder of the applicant has been convicted of a felony involving moral turpitude in any jurisdiction or of a crime which, if committed within this state, would constitute a felony involving moral turpitude under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, unless such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, unless and until such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction was had, or shall have received an official certification or pardon granted by the State Board of Pardons and Paroles which removes the legal disabilities resulting from such conviction and restores civil and political rights in this state. The term "substantial stockholder" as used in this subsection shall be deemed to refer to a person owning or controlling 10 percent or more of the total outstanding stock of the corporation in which such person is a stockholder.

(d) The department shall be authorized to obtain conviction data with respect to any applicant or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an applicant or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant has a criminal record in a state other than Georgia, the department shall submit to the Georgia Crime



Information Center two complete sets of fingerprints of such applicant or such person, the required records search fees, and such other information as may be required. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding. All conviction data received by the department shall be used by the department for the exclusive purpose of carrying out its responsibilities under this article, shall not be a public record, shall be privileged, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect the file. All such records shall be maintained by the department pursuant to laws regarding such records and the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable. As used in this subsection, "conviction data" means a record of a finding, verdict, or plea of guilty or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought. (Ga. L. 1965, p. 81, § 4; Code 1933, § 41A-3203, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1994, p. 1780, § 3; Ga. L. 2000, p. 174, § 18; Ga. L. 2003, p. 843, § 11; Ga. L. 2004, p. 458, § 6.)

**The 2003 amendment**, effective July 1, 2003, in subsection (a), inserted "sound and" in paragraph (a)(1) and added the second sentence in paragraph (a)(2); inserted ", or for money transmitters, equal to the outstanding orders to transmit but not yet paid for" in the middle of the first sentence in subsection (b); added subsection (c); and redesignated former subsection (c) as present subsection (d).

**The 2004 amendment**, effective July 1, 2004, in the second sentence of subsection (c), inserted "and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, unless and until such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abro-

gated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented" in the middle, substituted "an official certification or pardon" for "a certificate of good conduct", and substituted "which removes the legal disabilities resulting from such conviction and restores civil and political rights in this state" for "pursuant to the provisions of the executive law to remove the disability under this article because of such conviction" at the end.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2004, "crime which, if committed within this state" was substituted for "crime, which if committed within this state" in subsection (c).

## RESEARCH REFERENCES

**ALR.** — Power of savings bank or similar institution to provide checking facilities or

negotiable orders of withdrawal (NOW) to customers, 64 ALR3d 1314.

**7-1-683. License application; fee; bonding; alternative deposit of assets.**

(a) Each application for a license shall be in writing and under oath to the department, in such form as it may prescribe, and shall include the following:

(1) The legal name and principal office address of the corporation applying for the license;

(2) The name, residence, and business address of each director or equivalent official and of each officer who will be involved in selling checks in this state;

(3) The date and place of incorporation;

(4) If the applicant has one or more branches, subsidiaries, affiliates, agents, or other locations at or through which the applicant proposes to engage in the business of selling or issuing checks within the State of Georgia, the complete name of each and the address of each such location;

(5) The location where its initial registered office will be located in this state; and

(6) Such other data, financial statements, and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, branches, subsidiaries, affiliates, or agents.

(b) The application shall be filed together with:

(1) An investigation and supervision fee established by regulation of the department, which shall not be refundable but which, if the license is granted, shall satisfy the fee requirement for the first license year or the remaining part thereof; and

(2) A corporate surety bond issued by a bonding company or insurance company authorized to do business in this state and approved by the department. The bond for check sellers shall be in the principal sum of \$100,000.00, and the bond for money transmitters shall be in the principal sum of \$50,000.00, and in an additional principal sum of \$5,000.00 for each location, in excess of one, at or through which the applicant proposes to engage in this state in the business of selling or issuing checks, until the principal sum shall aggregate \$250,000.00, provided that the department may require additional coverage for the adequate protection of check holders if the average daily balances outstanding or, for money transmitters, if the outstanding orders to transmit not yet paid for by the licensee, exceed \$250,000.00 at intervals during the year as required by regulations. If required by the department the additional coverage shall be limited to \$1,250,000.00 or the average daily balances or orders outstanding in the State of Georgia for the

preceding year, whichever is lesser. The bond shall be in a form satisfactory to the department and shall run to the State of Georgia for the benefit of any check holders against the licensee or his or her agents. The condition of the bond shall be that the licensee will pay any and all moneys that may become due and owing any creditor of or claimant against the licensee arising out of the licensee's business of selling or issuing checks in this state, whether through its own act or the acts of an agent. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. Claimants against the licensee may themselves bring an action directly on the bond. The liability arising under this paragraph shall be limited to the receipt, handling, transmission, and payment of money arising out of the licensee's business of selling or issuing checks in this state.

(c) In lieu of such corporate surety bond or bonds or of any portion of the principal thereof, the applicant may deposit with a bank or trust company located in this state, as such applicant may designate and the department may approve, certificates of deposit insured by a federal agency, bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof or guaranteed by the United States or of the State of Georgia or of a municipality, county, school district, or instrumentality of the State of Georgia or guaranteed by the state to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. These assets shall be held to secure the same obligations as would the surety bond; but the licensee shall be entitled to receive all interest thereon and shall have the right, with the approval of the department, to substitute other assets approved by this Code section for those deposited and shall be required to do so on written order of the department made for good cause shown; provided, however, if the licensee substitutes assets more than once during the license period the department may charge a fee for the processing of such substitution to be prescribed by regulations of the department. In the event of the failure or insolvency of such licensee, the assets, any proceeds therefrom, and the funds deposited pursuant to this Code section shall be applied to the payment in full of claims arising out of transactions in this state for the sale or issuance of checks. (Ga. L. 1965, p. 81, § 5; Code 1933, § 41A-3204, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1978, p. 1717, § 8; Ga. L. 1995, p. 673, § 26; Ga. L. 2003, p. 843, § 12.)

**The 2003 amendment**, effective July 1, 2003, in paragraph (b)(2), in the second sentence, inserted "for check sellers", inserted ", and the bond for money transmitters shall be in the principal sum of \$50,000.00," inserted "or, for money transmitters, if the outstanding orders to transmit

not yet paid for by the licensee," and substituted "at intervals during the year as required by regulations" for "when the department conducts its annual examination and review" at the end, inserted "or orders" in the third sentence, and inserted "or her" near the end of the fourth sentence.



## RESEARCH REFERENCES

**ALR.** — Power of savings bank or similar institution to provide checking facilities or negotiable orders of withdrawal (NOW) to customers, 64 ALR3d 1314.

**7-1-684. Investigation of applicants; granting of licenses; single license for issuer and subsidiary seller.**

Upon the filing of the application, accompanied by the documents and fee prescribed in Code Section 7-1-683, the department shall conduct an investigation to determine if the criteria established by Code Section 7-1-682 have been satisfied. If the department determines to its satisfaction that the criteria of Code Section 7-1-682 have been met, it shall issue to the applicant a license to engage in the business of selling and issuing checks in this state. A license issued pursuant to this article shall remain in force and effect through its expiration date unless earlier surrendered, suspended, or revoked pursuant to this article. Where a corporation engages only in the business of selling checks issued by another corporation which is primarily obligated for payment of the checks and the seller is a wholly owned subsidiary of or is wholly owned by the sole corporate shareholder of the issuer, the department may grant a single license naming both the seller and issuer as joint licensees. In such cases, only a single license fee shall be collected and only one corporate surety bond pursuant to Code Section 7-1-683 may be required where such bond names both the seller and issuer. (Ga. L. 1965, p. 81, § 6; Code 1933, § 41A-3205, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 35; Ga. L. 1978, p. 1717, § 9; Ga. L. 1995, p. 673, § 27.)

**7-1-684.1. Examination of books and records of licensee; fees; on-site examination; authority of commissioner.**

(a) To assure compliance with the provisions of this article and in consideration of any application to renew a license pursuant to the provisions of Code Section 7-1-685, the department or its designated agent may examine the books and records of any licensee to the same extent as it is authorized to examine financial institutions under this chapter. Each licensee shall pay an examination fee as established by regulations of the department to cover the cost of such examination. The on-site examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state. The commissioner, in lieu of an on-site examination, may accept the examination report of an agency of another state or a report prepared by an independent accounting firm and reports so accepted shall be considered for all purposes as an official report of the commissioner. If the department determines, based on the records submitted to the department and past history of operations in the state, that an on-site examination is unnecessary then the on-site examination may be waived by the department.

(b) The commissioner may:

(1) Request financial data from a licensee in addition to that required under this article; and

(2) Conduct an on-site examination of a licensee, agent, or location of a licensee within this state without prior notice to the agent or licensee if the commissioner has a reasonable basis to believe that the licensee or agent is not in compliance with this article. The agent or licensee shall pay all reasonably incurred costs of the examination when the commissioner examines an agent's operations. (Code 1981, § 7-1-684.1, enacted by Ga. L. 2003, p. 843, § 13.)

**Effective date.** — This Code section became effective July 1, 2003.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d Banks and Banking Institutions, §§ 1167 et seq., 1217 et seq.

#### **7-1-685. Renewal of licenses; annual license fee.**

A license may be renewed for a period to be established by regulations of the department upon the filing of an application conforming to the requirements of Code Section 7-1-683 with such modifications as the department may allow. No investigation fee shall be payable in connection with such renewal application; but an annual license fee established by regulation of the department to defray the cost of supervision shall be paid with each renewal application, which fee shall not be refunded or prorated if the renewal application is approved. If a renewal application is filed with the department before expiration of an existing license, the license sought to be renewed shall continue in force until the issuance by the department of the renewal license applied for or until 20 days after the department shall have refused to issue such renewal license. (Ga. L. 1965, p. 81, § 7; Code 1933, § 41A-3206, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1995, p. 673, § 28.)

#### **7-1-686. Notice of action or change in number of locations; effect on bond or security deposit.**

(a) A licensee shall give notice to the department by registered or certified mail or statutory overnight delivery of any action which may be brought against it and of any judgment which may be entered against it by any creditor or any claimant, with respect to a check sold or issued in this state, with details sufficient to identify the action or judgment, within 30 days after the commencement of any such action or the entry of any such

judgment. The corporate surety shall, within ten days after it pays any claim to any creditor or claimant, give notice to the department by registered or certified mail or statutory overnight delivery of such payment with details sufficient to identify the claimant or creditor and the claim or judgment so paid. Whenever the principal sum of such bond is reduced by one or more recoveries or payments thereon, the licensee shall furnish a new or additional bond so that the total or aggregate principal sum of such bond or bonds shall equal the sum required under Code Section 7-1-683 or shall furnish an endorsement duly executed by the corporate surety reinstating the bond to the required principal sum thereof. The department may, by reasonable rules and regulations, provide for corresponding measures with respect to deposits made in lieu of a bond under subsection (c) of Code Section 7-1-683.

(b) A licensee shall give notice to the department by registered or certified mail or statutory overnight delivery of any increase in the number of locations at which it engages in the business of selling or issuing checks over the number previously reported in either its original or renewal application and shall show to the department that the bond or assets required under Code Section 7-1-683 have been increased accordingly. This notice shall be given quarterly, within 30 days after the end of each calendar quarter; and, if not given, such new location will not be considered as included under the licensee's license under this article. At any time the department is shown that a licensee has decreased the number of locations at or through which it proposes to engage in the business, the department may decrease the bond or security requirements accordingly.

(c) A bond filed with the department for the purpose of compliance with Code Section 7-1-683 may not be canceled by either the licensee or the corporate surety except upon notice to the department by registered or certified mail or statutory overnight delivery with return receipt requested, the cancellation to be effective not less than 30 days after receipt by the department of such notice and only with respect to any breach of condition occurring after the effective date of such cancellation. (Ga. L. 1965, p. 81, § 8; Code 1933, § 41A-3207, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1997, p. 143, § 7; Ga. L. 2000, p. 1589, § 3.)

**Editor's notes.** — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code

section is applicable with respect to notices delivered on or after July 1, 2000.

### 7-1-687. Agents of licensees.

A licensee may conduct its business at one or more locations in this state, so long as such locations have been included in the licensee's application and reports under Code Sections 7-1-683 and 7-1-686, and through such agents as it may designate. The department may within ten days after application, for cause, refuse to approve a licensee's designation of an agent



or, for cause, suspend a licensee's designation of an agent. In such cases the agent shall have the same procedural rights as are provided in this article for the denial, suspension, or revocation of a licensee's license. No additional license other than that obtained by the licensee shall be required of any duly reported agent of a licensee. An agent of a licensee shall sell or issue checks only at the location designated in the licensee's report to the department or at other locations of which the department has been notified. (Ga. L. 1965, p. 81, § 9; Code 1933, § 41A-3208, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 36.)

**7-1-687.1. Required records for five-year period; form; location of records.**

(a) Each licensee shall make, keep, and reserve the following books, accounts, and other records for a period of five years:

(1) A record of each check sold;

(2) A general ledger which shall be posted at least monthly containing all assets, liabilities, capital, and income and expense accounts;

(3) Settlement sheets received from agents;

(4) Bank statements and bank reconciliation records;

(5) Records of outstanding checks;

(6) Records of each check paid; and

(7) A list of the names and addresses of all of the licensee's agents.

(b) Records required to be made, kept, and reserved pursuant to subsection (a) of this Code section may be maintained in a photographic, electronic, or other similar form.

(c) Records required to be made, kept, and reserved pursuant to subsection (a) of this Code section may be maintained at a location outside the state so long as such records are made accessible to the commissioner within ten days of the date of a written notice by the commissioner to the licensee. (Code 1981, § 7-1-687.1, enacted by Ga. L. 2003, p. 843, § 14; Ga. L. 2004, p. 458, § 7.)

**Effective date.** — This Code section became effective July 1, 2003.

2004, substituted "five" for "three" in subsection (a).

**The 2004 amendment,** effective July 1,

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Banking Institutions, §§ 1179 et seq., 1219.

**7-1-688. Rules and regulations.**

Without limitation on the power conferred by Article 1 of this chapter, the department may make reasonable rules and regulations, not inconsistent with law, for the enforcement of this article. (Ga. L. 1965, p. 81, § 10; Code 1933, § 41A-3209, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-689. Denial, suspension, and revocation of license or designation of agent.**

(a) The department may suspend or revoke an original or renewal license or the designation of an agent of a licensee on any ground on which it might refuse to issue an original license or for a violation of any provision of this article or any rule or regulation issued under this article or for failure of the licensee to pay, within 30 days after it becomes final, a judgment recovered in any court within this state by a claimant or creditor in an action arising out of the licensee's business in this state of selling or issuing checks.

(b) No application for a license under this article shall be denied and no license granted under this article shall be suspended or revoked unless the applicant or licensee is given a reasonable opportunity to be heard by the department. For this purpose the department shall give the applicant or licensee at least 20 days' written notice of the time and place of such hearing by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant or licensee. Any order of the department denying, suspending, or revoking a license shall state the grounds upon which it is based and shall not be effective for 20 days after its rendition. A copy thereof shall be forwarded promptly by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant or licensee.

(c) A decision of the department denying a license, original or renewal, shall be conclusive, except that it may be subject to judicial review under Code Section 7-1-90. A decision of the department suspending or revoking a license shall be subject to judicial review in the same manner as a decision of the department to take possession of the assets and business of a bank under Code Section 7-1-155. (Ga. L. 1965, p. 81, §§ 11-13; Code 1933, § 41A-3210, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2000, p. 1589, § 3.)

**Editor's notes.** — Ga. L. 2000, p. 1589, section is applicable with respect to notices § 16, not codified by the General Assembly, delivered on or after July 1, 2000. provides that the amendment to this Code

**7-1-689.1. Cease and desist order for noncompliance; penalty; jurisdiction for judicial review; "person" defined; administrative penalties.**

(a) Whenever it shall appear to the department that any person required to be licensed or registered under this article has violated any law of this

state or any order or regulation of the department or is operating without a required license, the department may issue an initial written order requiring such person to cease and desist immediately from such unauthorized practices. Such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request for a hearing within such 20 day period. The hearing shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." A cease and desist order issued to an unlicensed person that orders such person to cease doing business without the appropriate license shall be final 30 days from the date of issuance and there shall be no opportunity for an administrative hearing. If the proper license or evidence of exemption for the time period cited in the order is obtained within the 30 day period, the order shall be rescinded by the department.

(b) Whenever a person required to be licensed under this article shall fail to comply with the terms of an order of the department which has been properly issued under the circumstances, the department may, through the Attorney General and upon notice of three days to such person, petition the principal court for an order directing such person to obey the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition the court shall allow a motion to show cause why it should not be granted. After a hearing upon the merits or after failure of such person to appear when ordered, the court shall grant the petition of the department upon a finding that the order of the department was properly issued.

(c) Any person required to be licensed under this article who violates the terms of any order issued pursuant to this Code section shall be liable for a civil penalty not to exceed \$1,000.00. Each day the violation continues shall constitute a separate offense. In determining the amount of a penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with the order, the gravity of the violation, the history of previous violations by such person, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to being imposed or has been imposed pursuant to this Code section. Any person assessed pursuant to this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the licensee involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90.

(d) Initial judicial review of a decision of the department entered pursuant to this Code section shall be available solely in the superior court of the county of domicile of the department.

(e) For purposes of this Code section, the term "person" includes any officer, director, employee, agent, or other person participating in the



conduct of the affairs of the person subject to the orders issued pursuant to this Code section.

(f) In addition to any other administrative penalties authorized by this article, the department may by regulation prescribe administrative fines for violations of this article and of any rules promulgated by the department pursuant to this article. (Code 1981, § 7-1-689.1, enacted by Ga. L. 2003, p. 843, § 15.)

**Effective date.** — This Code section became effective July 1, 2003.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 11 Am. Jur. 2d, Banks and Banking Institutions, §§ 1184 et seq., 1220.

#### **7-1-690. Assignment of claims to department for collection.**

At the written request of any claimant or creditor of a licensee whose claim is based on a transaction in this state for the sale or issuance of a check subject to regulation under this article, the department may, in its discretion, take an assignment of such claim in trust for the benefit of the assigning claimant or creditor and may bring any legal action necessary to collect such claim. Two or more such claims against a licensee may be combined in one such action. (Ga. L. 1965, p. 81, § 15; Code 1933, § 41A-3211, enacted by Ga. L. 1974, p. 705, § 1.)

#### **7-1-691. Civil liability of licensee on checks.**

Every check issued in the conduct of the business regulated by this article shall be signed by the licensee or his authorized representative; and the licensee shall be liable for the payment thereof to the same extent as a drawer of a negotiable instrument, whether or not the check is a negotiable instrument under Article 3 (Negotiable Instruments) of Title 11 (Uniform Commercial Code). (Ga. L. 1965, p. 81, § 16; Code 1933, § 41A-3212, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1997, p. 143, § 7.)

#### **7-1-692. Prohibited transactions.**

(a) No person or corporation shall sell checks as an agent of a principal seller when such principal seller is subject to licensing under this article but has not obtained a license hereunder; and any person who does so shall be deemed to be the principal seller thereof and not merely an agent and shall be liable to the holder or remitter as the principal seller.

(b) No person or corporation, other than a bank or trust company, an agent thereof, a licensee, or an agent of a licensee, shall undertake, in the

course of carrying on the business regulated in this article, to receive, transmit, or handle money on behalf of another to whom he issues a money order or a similar payment paper; and any person who does so shall be liable to the owner of the money order or similar payment paper for the payment thereof to the same extent as a drawer of a negotiable instrument, whether or not the money order or similar payment paper is a negotiable instrument under Article 3 (Negotiable Instruments) of Title 11 (Uniform Commercial Code). (Ga. L. 1965, p. 81, § 17; Code 1933, § 41A-3213, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1997, p. 143, § 7.)

#### ARTICLE 4A

### CASHING CHECKS, DRAFTS, OR MONEY ORDERS FOR CONSIDERATION

#### 7-1-700. Definitions.

As used in this article, the term:

(1) "Check casher" means an individual, partnership, association, or corporation engaged in cashing checks, money orders, or other drafts for a fee. Such fee may be payable in cash, in the form of exchange of value in excess of regular retail value, in the form of mandatory purchase of goods or services by patrons on a regular basis, which shall mean the check casher conducts such services more than ten times in any calendar month, or in the form of the purchase of catalog items or coupons or other items indicating the ability to receive goods, services, or catalog items.

(2) "Licensed casher of checks" means any individual, partnership, association, or corporation duly licensed by the Department of Banking and Finance to engage in business pursuant to the provisions of this article.

(3) "Licensee" means a licensed casher of checks, drafts, or money orders. (Code 1981, § 7-1-700, enacted by Ga. L. 1990, p. 739, § 1; Ga. L. 1997, p. 485, § 25.)

**Law reviews.** — For note on 1990 enactment of this article, see 7 Ga. St. U.L. Rev. 201 (1990).

#### 7-1-701. Licensure; written application.

(a) No person, partnership, association, or corporation shall engage in the business of cashing checks, drafts, or money orders for a consideration without first obtaining a license under this article. The term "consideration" shall include any premium charged for the sale of goods in excess of the cash price of such goods.

(b) Each application for a license shall be in writing and under oath to the department, in such form as the department may prescribe, and shall include the following:

(1) The legal name, residence, and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, and director thereof;

(2) The location where the initial registered office of the applicant will be located in this state;

(3) The complete address of any other locations at which the applicant proposes to engage in cashing checks; and

(4) Such other data, financial statements, and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, or agents.

(c) The application shall be filed together with an investigation and supervision fee established by regulation which shall not be refundable but which, if the license is granted, shall satisfy the fee requirement for the first license year or the remaining part thereof. (Code 1981, § 7-1-701, enacted by Ga. L. 1990, p. 739, § 1.)

**7-1-702. Background investigation; effect of past convictions; conviction data; license posting requirements; term of license.**

(a) The department shall conduct an investigation of every applicant to determine the financial responsibility, experience, character, and general fitness of the applicant. If the department determines to its general satisfaction:

(1) That the applicant is financially responsible and appears to be able to conduct the business of cashing checks in an honest, fair, and efficient manner and with the confidence and trust of the community; and

(2) That the granting of such application will promote the convenience and advantage of the area in which the business is to be conducted,

the department shall issue the applicant a license to engage in the business of cashing checks.

(b) The department shall not issue such a license if it finds that the applicant, or any person who is a director, officer, partner, agent, employee, or substantial stockholder of the applicant, has been convicted of a felony involving moral turpitude in any jurisdiction or of a crime which, if committed within this state, would constitute a felony involving moral turpitude under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person



shall have pleaded guilty to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, unless such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, unless and until such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction was had, or shall have received an official certification or pardon granted by the State Board of Pardons and Paroles which removes the legal disabilities resulting from such conviction and restores civil and political rights in this state. The term "substantial stockholder" as used in this subsection shall be deemed to refer to a person owning or controlling 10 percent or more of the total outstanding stock of the corporation in which such person is a stockholder.

(c) The department shall be authorized to obtain conviction data with respect to any applicant or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an applicant or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant has a criminal record in a state other than Georgia, the department shall submit to the Georgia Crime Information Center two complete sets of fingerprints of such applicant or such person, the required records search fees, and such other information as may be required. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding. All conviction data received by the department shall be used by the department for the exclusive purpose of carrying out its responsibilities under this article, shall not be a public record, shall be privileged, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect the file. All such records shall be maintained by the department pursuant to laws regarding such records and the rules and regulations of

the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable. As used in this subsection, "conviction data" means a record of a finding, verdict, or plea of guilty or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(d) Such license shall be kept conspicuously posted in the place of business of the licensee. Such license shall not be transferable or assignable.

(e) A license issued pursuant to this article shall remain in force and effect through its expiration date unless earlier surrendered, suspended, or revoked pursuant to this article. (Code 1981, § 7-1-702, enacted by Ga. L. 1990, p. 739, § 1; Ga. L. 1994, p. 1780, § 4; Ga. L. 1995, p. 673, § 29; Ga. L. 2000, p. 174, § 19; Ga. L. 2004, p. 458, § 8.)

**The 2004 amendment**, effective July 1, 2004, in subsection (b), in the second sentence, deleted a comma following the first occurrence of "magistrate", the third occurrence of "guilty", and the second occurrence of "verdict", inserted "and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, unless and until such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation

and sentence of a first offender have been successfully completed and documented" in the middle, substituted "an official certification or pardon" for "a certificate of good conduct", and substituted "which removes the legal disabilities resulting from such conviction and restores civil and political rights in this state" for "pursuant to the provisions of the executive law to remove the disability under this article because of such conviction" at the end, and deleted a comma following "stockholder" and following "subsection" in the last sentence.

### **7-1-703. License renewal.**

A license may be renewed for a period to be established by regulations of the department upon the filing of an application substantially conforming to the requirements of Code Section 7-1-701 with such modifications as the department may specify and as may be necessary. No investigation fee shall be payable in connection with such renewal application; but an annual license fee established by regulation of the department to defray the cost of supervision shall be paid with each renewal application, which fee shall not be refunded or prorated if the renewal application is approved. If a renewal application is filed with the department before expiration of an existing license, the license sought to be renewed shall continue in force until the issuance by the department of the renewal license applied for or until 20 days after the department shall have refused to issue such renewal license. (Code 1981, § 7-1-703, enacted by Ga. L. 1990, p. 739, § 1; Ga. L. 1995, p. 673, § 30.)

**7-1-704. Rules and regulations for enforcement of article; examination of books and records of licensee.**

(a) Without limitation on the power conferred by Article 1 of this chapter, the department may make reasonable rules and regulations, not inconsistent with law, for the interpretation and enforcement of this article.

(b) To assure compliance with the provisions of this article and in consideration of any application to renew a license pursuant to the provisions of Code Section 7-1-703, the department or its designated agent may examine the books and records of any licensee to the same extent as it is authorized to examine financial institutions under this chapter. Each licensee shall pay an examination fee as established by regulations of the department to cover the cost of such examination.

(c) To assure compliance with the provisions of this article, the department may review the fees charged and fee income of any person cashing checks for a fee who claims exemption from licensing. Each person claiming exemption who is reviewed shall pay an hourly fee as provided in departmental regulations when the review requires more than four examiner hours and the review results in a finding that a license is required. The department, in its discretion, may permit the party claiming exemption to supply to the department the necessary books and records for its review at department headquarters.

(d) The department shall remit all examination fees paid by licensees in accordance with Code Section 7-1-43, net of any cost paid to third parties authorized by the department to perform such examination services. (Code 1981, § 7-1-704, enacted by Ga. L. 1990, p. 739, § 1; Ga. L. 1997, p. 485, § 26; Ga. L. 1999, p. 674, § 27.)

**7-1-705. Notice to be posted by licensee; record-keeping requirements; check cashing procedures; prohibited advertising; procedure on notice of illegal act involving check.**

(a) In every location licensed under this article, there shall be conspicuously posted and at all times displayed a notice stating the charges for cashing checks.

(b) Each licensee shall keep and use in its business such books, accounts, and records as the department may require to carry into effect the provisions of this article and the rules and regulations. Every licensee shall preserve such books, accounts, and records for at least two years.

(c) Before a licensee shall deposit with any bank a check, draft, or money order cashed by such licensee, the same must be endorsed with the actual name under which such licensee is doing business.

(d)(1) No licensee shall receive any check, draft, or money order with payment deferred pending collection. Payment shall be made immedi-



ately in cash for every check, draft, or money order accepted by the licensee.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, drafts may be accepted for collection with payment deferred where the licensee has posted a surety bond in the same manner as prescribed for check sales licensees under Code Section 7-1-683. The amount of the surety bond shall be \$10,000.00 for each location operated by the licensee if the licensee operates three or fewer locations. For a fourth or fifth location operated by a licensee, the amount of the surety bond shall be \$5,000.00 for each such location. For each location operated by a licensee in excess of a fifth location, the amount of the surety bond shall be \$1,000.00. In no event shall payment of a draft be deferred past the time that the licensee has collected on the draft. Upon collection, payment shall be made immediately to the party from whom the licensee accepted the draft.

(e) No licensee shall cash a check, draft, or money order made payable to a payee other than a natural person unless such licensee has previously obtained appropriate documentation from the executive entity of such payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.

(f) No licensee shall indicate through advertising, signs, billhead, or otherwise that checks may be cashed without identification of the bearer of such check, and any person seeking to cash a check shall be required to submit such reasonable identification as shall be prescribed by the department; provided, however, the provisions of this subsection shall not prohibit a licensee from cashing a check simultaneously with the verification and establishment of the identity of the presenter by means other than the presentation of identification.

(g) Within five business days after being advised by the payor financial institution that a check, draft, or money order has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority, or represents the proceeds of illegal activity, the licensee shall notify the department and the district attorney for the judicial circuit in which the check was received. In the event a check, draft, or money order is returned to the licensee by the payor financial institution for any of the aforementioned reasons, the licensee may not release the check, draft, or money order without the consent of the district attorney or other investigating law enforcement authority. (Code 1981, § 7-1-705, enacted by Ga. L. 1990, p. 739, § 1; Ga. L. 1991, p. 720, § 1; Ga. L. 1994, p. 1780, § 5.)

#### **7-1-706. Check-cashing fees.**

No licensed casher of checks shall:

(1) Charge check-cashing fees, except as otherwise provided in this Code section, in excess of 5 percent of the face amount of the check or draft or \$5.00, whichever is greater;

(2) Charge check-cashing fees in excess of 3 percent of the face amount of the check or draft or \$5.00, whichever is greater, if such check or draft is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of such check or draft; or

(3) Charge check-cashing fees for personal checks or money orders in excess of 10 percent of the face amount of the personal check or money order or \$5.00, whichever is greater. (Code 1981, § 7-1-706, enacted by Ga. L. 1990, p. 739, § 1.)

**Code Commission notes.** — Pursuant to “check-cashing” was substituted for “check Code Section 28-9-5, in 1990, cashing” throughout this Code section.

### **7-1-707. Suspension or revocation of license.**

(a) The department may suspend or revoke any licenses or license issued pursuant to this article if, after notice and a hearing:

(1) It shall find that the licensee:

(A) Has committed any fraud, engaged in any dishonest activities, or made any misrepresentation;

(B) Has violated any provisions of the banking law or any regulation issued pursuant thereto or has violated any other law in the course of its or his dealings as a licensed casher of checks;

(C) Has made a false statement in the application for such license or failed to give a true reply to a question in such application;

(D) Has demonstrated his or its incompetency or untrustworthiness to act as a licensed casher of checks; or

(E) Has charged check-cashing fees, exclusive of direct costs of verification, in unconscionable amounts which do not adequately reflect:

(i) The level of risk associated with the cashing of checks of a particular class using ordinary prudence and commercially reasonable standards of identification and acceptance;

(ii) The cost of funds necessary to operate a check-cashing business; and

(iii) The extraordinary costs for security safeguards associated with the business location of the licensee; or

(2) It shall find that any ground or grounds exist which would require or warrant the refusal of an application for the issuance of the license if such an application were then before it.

(b) No application for a license under this article shall be denied and no license granted under this article shall be suspended or revoked unless the applicant or licensee is given a reasonable opportunity to be heard by the department. For this purpose, the department shall give the applicant or licensee at least 20 days' written notice of the time and place of such hearing by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant or licensee. A copy of such notice of hearing shall be mailed to any association of licensees registered with the department for the purpose of receiving such notices, and such association shall be permitted to participate in the hearing, either on behalf of the applicant or in opposition to the application. Any order of the department denying, suspending, or revoking a license shall state the grounds upon which it is based and shall not be effective for 20 days after its rendition. A copy thereof shall be forwarded promptly by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant or licensee.

(c) A decision of the department denying a license, original or renewal, shall be conclusive, except that it may be subject to judicial review under Code Section 7-1-90. A decision of the department suspending or revoking a license shall be subject to judicial review in the same manner as a decision of the department to take possession of the assets and business of a bank under Code Section 7-1-155.

(d) The provisions of this Code section shall not apply when a license is denied or suspended as provided in Code Section 7-1-707.1.

(e)(1) Whenever it shall appear to the department that any person required to be licensed or registered under this article has violated any law of this state or any order or regulation of the department, the department may issue an initial written order requiring such person to cease and desist immediately from such unauthorized practices. Such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request within such 20 day period for a hearing. The hearing shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." A cease and desist order to an unlicensed person that orders such person to cease doing a check-cashing business without the appropriate license shall be final 30 days from the date of issuance, and there shall be no opportunity for an administrative hearing. If the proper license or evidence of exemption is obtained within the 30 day period, the order shall be rescinded by the department.

(2) Whenever a person required to be licensed under this article shall fail to comply with the terms of an order of the department which has been properly issued under the circumstances, the department, upon notice of three days to such person, may, through the Attorney General, petition the principal court for an order directing such person to obey



the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition, the court shall allow a motion to show cause why it should not be granted. Whenever, after a hearing upon the merits or after failure of such person to appear when ordered, it shall appear that the order of the department was properly issued, the court shall grant the petition of the department.

(3) Any person required to be licensed under this article who violates the terms of any order issued pursuant to this Code section shall be liable for a civil penalty not to exceed \$1,000.00. Each day the violation continues shall constitute a separate offense. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with the order, the gravity of the violation, the history of previous violations by such person, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to imposition or has been imposed pursuant to this Code section. Any person assessed as provided in this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the licensee involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90.

(4) Initial judicial review of the decision of the department entered pursuant to this Code section shall be available solely in the superior court of the county of domicile of the department.

(5) For purposes of this Code section, the term "person" includes any officer, director, employee, agent, or other person participating in the conduct of the affairs of the person subject to the orders issued pursuant to this Code section.

(6) In addition to any other administrative penalties authorized by this article, the department may, by regulation, prescribe administrative fines for violations of this article and of any rules promulgated by the department pursuant to this article. (Code 1981, § 7-1-707, enacted by Ga. L. 1990, p. 739, § 1; Ga. L. 1991, p. 94, § 7; Ga. L. 1998, p. 1094, § 2; Ga. L. 2000, p. 174, § 20; Ga. L. 2000, p. 1589, § 3.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1990, "check-cashing" was substituted for "check cashing" in two places in subparagraph (a)(1)(E).

**Editor's notes.** — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

**7-1-707.1. Suspension or denial of license to student borrowers in default and not in satisfactory repayment status.**

(a) As used in this Code section, the term:

(1) "Agency" means the Georgia Higher Education Assistance Corporation created in Code Section 20-3-263 which is responsible for administering a program of guaranteed educational loans to eligible students and eligible parents known as the Georgia Higher Education Loan Program.

(2) "Borrower" means an individual who borrowed a guaranteed educational loan under the Georgia Higher Education Loan Program.

(3) "Default" means default as defined by federal law under the Higher Education Act of 1965.

(4) "Satisfactory repayment status" means the borrower has agreed to repay the defaulted loan to the agency and has made a payment in the most recent prior 60 days.

(b) The department shall suspend, as provided for in Code Section 20-3-295, the license of any check casher upon receipt of a record from the agency stating that such licensee is a borrower in default who is not in satisfactory repayment status.

(c) The department shall deny, as provided for in Code Section 20-3-295, the application or renewal of any applicant or licensee upon receipt of a record from the agency stating that such applicant or licensee is a borrower in default who is not in satisfactory repayment status.

(d) Notwithstanding any other provisions of law, the hearings and appeals procedures provided for in Code Section 20-3-295, where applicable, shall be the only such procedures required to suspend a license or deny the issuance or renewal of an application for a license under this article. (Code 1981, § 7-1-707.1, enacted by Ga. L. 1998, p. 1094, § 3.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1998, "for" was deleted following "for in" in subsection (c).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 77 Am. Jur. 2d, United States, § 44.

**7-1-708. Violation of article.**

Any person, partnership, association, or corporation and the several members, officers, directors, agents, and employees thereof who shall violate any of the provisions of this article shall be guilty of a misdemeanor

and shall be punishable by imprisonment for not more than one year or by a fine of not more than \$500.00, or by both such fine and imprisonment. (Code 1981, § 7-1-708, enacted by Ga. L. 1990, p. 739, § 1; Ga. L. 1991, p. 94, § 7.)

### **7-1-709. Applicability of article.**

(a) This article shall not apply to any bank, trust company, credit union, building and loan association, or savings and loan association which is chartered under the laws of this state or under federal law and which has lawfully entered this state to engage in a banking business.

(b) The provisions of Code Sections 7-1-701, 7-1-702, and 7-1-703, and of subsections (a) through (d) of Code Section 7-1-707 shall not apply to persons, partnerships, associations, or corporations engaged in the business of cashing checks, drafts, or money orders:

(1) Incidental to the retail sale of goods or services for a consideration of not more than 2 percent of the face amount of the check, draft, or money order or \$2.00 per check, draft, or money order, whichever is greater, and where the aggregate gross income received by such person, partnership, association, or corporation as consideration for the cashing of checks does not exceed \$25,000.00 per annum for each business location; or

(2) Where the aggregate gross income received by such person, partnership, association, or corporation as consideration for the cashing of checks, drafts, or money orders does not exceed \$12,000.00 by such person, partnership, association, or corporation during its most recently completed fiscal year.

In all other respects, such persons, partnerships, associations, or corporations shall be deemed to be licensees under this article.

(c) Persons, partnerships, associations, or corporations claiming exemption under paragraph (2) of subsection (b) of this Code section shall register with the department on or before August 1 of each year certifying as to the basis for such exemption. A single registration accompanied by a registration fee to be established by regulations of the department shall cover all locations operated by such person, partnership, association, or corporation. (Code 1981, § 7-1-709, enacted by Ga. L. 1990, p. 739, § 1; Ga. L. 1991, p. 784, § 1; Ga. L. 1997, p. 485, § 27; Ga. L. 2000, p. 174, § 21; Ga. L. 2002, p. 1220, § 10; Ga. L. 2003, p. 643, § 1.)

**The 2002 amendment**, effective July 1, 2002, substituted “which has lawfully entered this state to engage in a banking business” for “domiciled in this state” at the end of subsection (a).

**The 2003 amendment**, effective July 1, 2003, near the beginning of paragraph (b)(1), substituted “2 percent” for “1 percent” and substituted “or \$2.00” for “or \$1.00”.



## ARTICLE 5

## INTERNATIONAL BANKING CORPORATIONS AND BANK AGENCIES

**Law reviews.** — For article discussing limitations on the establishment and transaction of international banking in Georgia, see 27 Mercer L. Rev. 629 (1976).

For note discussing the interrelationship between the International Banking Act, the provisions of the Financial Institutions Code

relating to domestic banking, and the Foreign Corporations Chapter of the Corporation Code in the regulation of international banking in Georgia and comparing Georgia provisions with those of New York and California, see 27 Mercer L. Rev. 827 (1976).

## OPINIONS OF THE ATTORNEY GENERAL

**Determination of whether international banking corporation is a bank for tax purposes.** — Determination of whether an international banking corporation which plans to open agency office in state is a bank for tax purposes should be based upon operation and legal powers of proposed agency office. 1976 Op. Att'y Gen. No. 76-105.

An international banking corporation whose sole contact with Georgia is its operation of an agency office licensed under the statutes (see O.C.G.A. Art. 5, Ch. 1, T. 7) is not a bank for purposes of Georgia revenue statutes. 1976 Op. Att'y Gen. No. 76-105.

## 7-1-710. Definitions.

As used in this article, the term:

(1) "International bank agency" means the international banking corporation with respect to all business or activities conducted in this state or through an office located in this state.

(2) "International banking corporation" means a banking corporation organized and licensed under the laws of some foreign country or a political subdivision thereof, other than the United States of America or any of the states within the United States of America. For purposes of this article, a foreign country shall include any territories or possessions of the United States. (Ga. L. 1972, p. 1140, § 1; Code 1933, § 41A-3301, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1211, § 15.)

## RESEARCH REFERENCES

C.J.S. — 19 C.J.S., Corporations, § 883.

## 7-1-711. Application of this chapter.

International bank agencies shall be subject to all the provisions of Articles 1 and 2 of this chapter, except where it may appear, from the context or otherwise, that such provisions are clearly applicable only to banks or trust companies organized under the laws of this state or the United States. An international bank agency shall have no greater right under or by virtue of this article and amendments thereto than is granted

to banks organized under the laws of this state. Legal and financial terms used herein shall be deemed to refer to equivalent terms used by the country in which the international banking corporation is organized. (Ga. L. 1972, p. 1140, § 2; Code 1933, § 41A-3302, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**ALR.** — Power of savings bank or similar institution to provide checking facilities or negotiable orders of withdrawal (NOW) to customers, 64 ALR3d 1314.

#### **7-1-712. Application of Article 15 of Chapter 2 of Title 14.**

Notwithstanding the definition of the term “foreign corporation” appearing in paragraph (13) of Code Section 14-2-140, all of the provisions of Article 15 of Chapter 2 of Title 14, relating to foreign corporations, shall apply to all international bank agencies doing business in this state, except that references therein to the Secretary of State should be construed as references to the department. (Ga. L. 1972, p. 1140, § 3; Code 1933, § 41A-3303, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 946, § 70; Ga. L. 1989, p. 1257, § 24; Ga. L. 2004, p. 508, § 70.)

**The 2004 amendment**, effective July 1, “paragraph (10)” near the beginning of this 2004, substituted “paragraph (13)” for Code section.

#### **7-1-713. Requirements for carrying on banking business.**

(a) No international banking corporation shall transact a banking business or maintain in this state any office for carrying on such business or any part thereof unless such corporation shall have:

(1) Been authorized by its articles to carry on such business and shall have complied with the laws of the country under which it is chartered;

(2) Furnished to the department such proof as to the nature and character of its business and as to its financial condition as the department may require;

(3) Filed with the department:

(A) A duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the department its true and lawful attorney upon whom all process in any action against it may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state; and

(B) A written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation,

specifying the name and address of the officer, agent, or other person to whom such process shall be forwarded by the department;

(4) Paid to the department the fee established by regulation of the department to defray the cost of investigation and supervision; and

(5) Received a license duly issued to it by the department.

(b) The department shall not issue a license to an international banking corporation unless it is chartered in a country which permits banks chartered in the United States of America or any of its states to establish similar facilities therein. (Ga. L. 1972, p. 1140, § 4; Code 1933, § 41A-3304, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking,  
§ 664.

#### **7-1-714. Actions against international banking corporations.**

(a) An action against an international banking corporation doing business in this state may be maintained by a resident of this state for any cause of action. For purposes of this subsection, the term "resident of this state" shall include any corporation formed under the laws of this state.

(b) An action against an international banking corporation doing business in this state may be maintained by another international banking corporation or by a nonresident of this state in the following cases only:

(1) Where the action is brought to recover damages for the breach of a contract made or to be performed within this state or relating to property situated within this state at the time of the making of the contract;

(2) Where the subject matter of the litigation is situated within this state;

(3) Where the cause of action arose within this state, except where the object of the action is to affect the title of real property situated outside this state; or

(4) Where the action is based on a liability for acts done within this state by an international banking corporation or its international bank agency. (Ga. L. 1972, p. 1140, § 5; Code 1933, § 41A-3305, enacted by Ga. L. 1974, p. 705, § 1.)

#### **7-1-715. Application for license.**

(a) Every international banking corporation, before being licensed by the department to transact a banking business in this state or before



maintaining in this state any office to carry on such business or any part thereof, shall subscribe and acknowledge and submit to the department at its office a separate application, in duplicate, which shall state:

- (1) The name of such international banking corporation;
- (2) The location by street and post office address and county where its business is to be transacted in this state and the name of the person who shall be in charge of the business and affairs of such agency;
- (3) The location where its initial registered office will be located in this state;
- (4) The amount of its capital actually paid in and the amount subscribed for and unpaid; and
- (5) The actual value of the assets of such international banking corporation, which must be at least \$50 million in excess of its liabilities, and a complete and detailed statement of its financial condition as of a date within 60 days prior to the date of such application; except that the department, in its discretion, may, when necessary or expedient, accept such statement of financial condition as of a date within 120 days prior to the date of such application.

(b) At the time such application is submitted to the department, such corporation shall also submit a duly authenticated copy of its articles and an authenticated copy of its bylaws, or an equivalent thereof satisfactory to the department, and pay an investigation and supervision fee to be established by regulation of the department. (Ga. L. 1972, p. 1140, § 6; Code 1933, § 41A-3306, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

C.J.S. — 9 C.J.S., Banks and Banking,  
§ 664.

#### **7-1-716. Effect, renewal, and revocation of licenses; permissible activities.**

(a) When the department shall have issued a license to any such international banking corporation, it may engage in the business authorized by this article at the office specified in such license until the license expires or until such license is surrendered or revoked. The department may establish the license period by regulation. No such license shall be transferable or assignable.

(b) Such license may be renewed annually within 30 days of the expiration of such license upon application to the department upon forms to be supplied by it for that purpose. Such license may be renewed by the department upon its determination, with or without examination, that the international banking corporation is in a safe and satisfactory condition,

that it has complied with requirements of law with respect to the international bank agency, and that such renewal of the license is proper and has been duly authorized by proper corporate action.

(c) Such license may be revoked by the department, with or without examination, upon its determination that the international banking corporation does not meet the criteria established by subsection (b) of this Code section for renewal of licenses.

(d) In the event any such license shall be revoked by the department or the renewal thereof refused by the department, all the rights and privileges of such international banking corporation to transact the business thus licensed shall forthwith cease, and such license shall be surrendered to the department within 24 hours after the licensee has received written notice of such decision.

(e) An international banking corporation licensed under the terms of this article to carry on business in this state shall be authorized to conduct a general banking business through its international bank agency in like manner as banks existing under the laws of this state, except that no such international banking corporation shall, through such agency, exercise fiduciary powers or receive deposits but may maintain for the account of others credit balances incidental to or arising out of the exercise of its lawful powers. (Ga. L. 1972, p. 1140, § 7; Code 1933, § 41A-3307, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 201, § 1; Ga. L. 1995, p. 673, § 31.)

#### RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking,  
§ 664.

#### **7-1-717. Securities, and other evidence of indebtedness to be held in this state.**

(a) Each international banking corporation shall hold, at its office in this state, currency, bonds, notes, debentures, drafts, bills of exchange, or other evidence of indebtedness or other obligations payable in the United States or in United States funds or, with the prior approval of the department, in funds freely convertible into United States funds in an amount which shall be not less than 108 percent of the aggregate amount of liabilities of such international banking corporation payable at or through its office in this state or as a result of the operations of the international bank agency, including acceptances but excluding:

(1) Accrued expenses; and

(2) Amounts due and other liabilities to other offices or branches of and wholly owned (except for a nominal number of directors' shares) subsidiaries of such international banking corporation.

(b) For the purpose of this Code section, the department shall value marketable securities at principal amount or market value, whichever is lower; shall have the right to determine the value of any nonmarketable bond, note, debenture, draft, bill of exchange, or other evidence of indebtedness or of any other obligation held by or owed to the international banking corporation in this state; and, in determining the amount of assets for the purpose of computing the above ratio of assets to liabilities, shall have the power to exclude any particular assets but may give credit, subject to such rules and regulations as the department may from time to time promulgate, to deposits and credit balances with unaffiliated banking institutions outside this state if such deposits or credit balances are payable in United States funds or in currencies freely convertible into United States funds, provided that credit given for such deposits and credit balances shall not exceed in aggregate amounts such percentage, but not less than 8 percent, as the department may from time to time prescribe of the aggregate amount of liabilities of such international banking corporation, determined as hereinabove provided.

(c) If by reason of the existence or the potential occurrence of unusual or extraordinary circumstances the department deems it necessary or desirable for the maintenance of a sound financial condition, for the protection of creditors and the public interest, and to maintain public confidence in the business of the international bank agency of the international banking corporation, it may reduce the credit to be given as above provided for deposits and credit balances with unaffiliated banking institutions outside this state and it may require such international banking corporation to deposit, in accordance with such rules and regulations as the department shall from time to time promulgate, the assets required to be held in this state pursuant to this Code section with such bank or trust company existing under the laws of this state as such international banking corporation may designate and the department may approve. (Ga. L. 1972, p. 1140, § 8; Code 1933, § 41A-3308, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-718. Financial certifications; restrictions on investments, loans, and acceptances.**

(a) Before opening an office in this state and annually thereafter so long as a bank office is maintained in this state, an international banking corporation, licensed pursuant to this article, shall certify to the department the amount of its paid-in capital, its surplus, and its undivided profits, each expressed in the currency of the country of its incorporation. The dollar equivalent of which amount, as determined by the department, shall be deemed to be the amount of its capital, surplus, and undivided profits.

(b) Purchases and discounts of bills of exchange, bonds, debentures, and other obligations and extensions of credit and acceptances by an international bank agency within this state shall be subject to the same limitations



as to amount in relation to capital, surplus, and undivided profits as are applicable to banks organized under the laws of this state; provided, however, that, with the prior approval of the department, the capital notes and capital debentures of such international banking corporation may be treated as capital in computing such limitations. (Ga. L. 1972, p. 1140, § 9; Code 1933, § 41A-3309, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking,  
§ 664.

#### 7-1-719. Reports.

(a) Every international banking corporation doing business in this state shall, at such times and in such form as the department shall prescribe, make written reports in the English language to the department under the oath of one of its officers, managers, or agents transacting business in this state, showing the amount of its assets and liabilities and containing such other matters as the department shall prescribe. If any such international banking corporation shall fail to make any such report, as directed by the department, or if any such report shall contain any false statement knowingly made, the same shall be grounds for revocation of the license of the international banking corporation.

(b) Code Section 7-1-68 shall not apply to international banking corporations or international bank agencies. (Ga. L. 1972, p. 1140, § 10; Code 1933, § 41A-3310, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**C.J.S.** — 9 C.J.S., Banks and Banking,  
§§ 663, 664.

#### 7-1-720. Dissolution.

When an international banking corporation licensed to maintain an international bank agency in this state is dissolved or its authority or existence is otherwise terminated or canceled in the jurisdiction of its incorporation, a certificate of the official responsible for records of banking corporations of the jurisdiction of incorporation of such international banking corporation attesting to the occurrence of any such event or a certified copy of an order or decree of a court of such jurisdiction directing the dissolution of such international banking corporation or the termination of its existence or the cancellation of its authority shall be delivered to the department. The filing of the certificate, order, or decree shall have the same effect as the revocation of such international banking corporation's license as provided in subsection (d) of Code Section 7-1-716. The

department shall continue as agent of the international banking corporation upon whom process against it may be served in any action based upon any liability or obligation incurred by the international banking corporation within this state prior to the filing of such certificate, order, or decree; and it shall promptly cause a copy of such process to be mailed by registered or certified mail or statutory overnight delivery, return receipt requested, to such international banking corporation at the post office address specified for such purpose on file with the department. (Ga. L. 1972, p. 1140, § 11; Code 1933, § 41A-3311, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2000, p. 1589, § 3.)

**Editor's notes.** — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

#### RESEARCH REFERENCES

C.J.S. — 9 C.J.S., Banks and Banking, § 664.

#### 7-1-721. International representative offices.

(a) An international bank agency which does not transact a banking business or any part thereof in or through an office in this state but maintains an office in this state for other purposes shall be deemed to have an "international representative office."

(b) Each international representative office located in this state shall register with the Department of Banking and Finance annually on forms prescribed by the department. Such registration shall be filed in accordance with departmental regulation, shall be accompanied by a registration fee prescribed by regulations of the department, and shall list the name and telephone and facsimile numbers of the local representative, the street address of the office, and the nature of the business to be transacted in or through the office.

(c) The department may review the operations of any international representative office annually or at such greater frequency as it deems necessary to assure that the office does not transact a banking business. (Code 1933, § 41A-3312, enacted by Ga. L. 1978, p. 1712, § 2; Ga. L. 1995, p. 673, § 32.)

#### ARTICLE 5A

#### DOMESTIC INTERNATIONAL BANKING FACILITIES

#### 7-1-730. Short title.

This article shall be known as the "Domestic International Banking Facility Act." (Ga. L. 1981, p. 770, § 1.)

**7-1-731. "Domestic international banking facility" defined.**

As used in this article, the term "domestic international banking facility" means the location within this state of any banking office, other than an "international bank agency," as defined in Code Section 7-1-710, which derives its funds (1) from sources outside of the United States, (2) from another domestic international banking facility, or (3) from temporary advances from its parent organization and employs those funds for banking purposes outside of the United States or through its parent organization, but does not accept deposits subject to check or draft. A domestic international banking facility, when properly established pursuant to this article, shall not be considered to be a "branch office" or "main office" as defined in Code Section 7-1-600. (Ga. L. 1981, p. 770, § 2; Ga. L. 1999, p. 674, § 28.)

**7-1-732. Eligibility to operate domestic international banks; registration required; records; exemption from taxes and license fees.**

(a) Any bank, whether domiciled within this state or elsewhere and having total capital funds of \$25 million or more, as reported to its chartering authority as of December 31 of each year, may establish and operate a domestic international banking facility in this state upon compliance with this article. Any bank having total capital funds of \$25 million or less may establish such facility upon compliance with this article and upon further obtaining the approval of the department. The department shall grant such approval only after it has satisfied itself that the registrant is financially sound, is operating in substantial conformity with all applicable laws and regulations, and is, along with its principals, of good character and reputation.

(b) Prior to establishing a domestic international banking facility and annually thereafter for so long as the facility shall continue in this state, the bank shall register with the department on such forms as the department shall prescribe and pay a registration fee as determined by the department. Such registration shall include:

- (1) The name and main office address of the registrant;
- (2) The address at which the facility is to be located;
- (3) The names of the individuals responsible for administering the business affairs of the facility in this state;
- (4) The name and address of the chartering authority for the registrant;
- (5) A resolution from the board of directors or other governing body of the registrant authorizing the establishment of the facility;



(6) A statement of the registrant that it has the legal capacity under the laws pursuant to which it is organized to establish the facility and that its chartering authority (and regulatory authority if different) interposes no objection to the establishment of such facility; and

(7) Such other information as the department may require.

Information required in paragraphs (5) and (6) of this subsection need not be resubmitted upon renewal of a registration. The facility shall promptly notify the department of any change in the management or location of the facility.

(c) The domestic international banking facility shall maintain records of its business activities separate from records of the domestic banking activities of its parent or head office.

(d) The domestic international banking facility shall not be subject to any tax or license fee in this state by virtue of its business location in this state or its business activities outside of this state. (Ga. L. 1981, p. 770, § 3.)

**7-1-733. Rejection or revocation of registration as a domestic international banking facility.**

(a) The department may revoke any registration or reject any application to register or renew a registration for a domestic international banking facility upon a finding that:

(1) The facility no longer qualifies to register under this article;

(2) The scope of the business conducted by the facility exceeds that authorized by this article;

(3) The chartering authority of the parent bank of the facility requests such action in writing; or

(4) The department determines, on its own initiative or otherwise, that representations made by the registrant, including, but not limited to, representations under paragraph (6) of subsection (b) of Code Section 7-1-732, are inaccurate.

(b) No facility whose registration has been rejected by the department may establish an international banking facility in this state. (Ga. L. 1981, p. 770, § 4.)

**7-1-734. Examination and supervision by the department; agreements with other bank regulatory authorities.**

(a) The department may examine the operations of any domestic international banking facility for the purpose of determining that the scope of its activities does not exceed that allowed pursuant to this article and that

the facility is otherwise operating in compliance with the applicable laws of this state. The department may by regulation establish minimum requirements for the maintenance of books and records in sufficient form to enable the department to carry out its responsibilities under this Code section.

(b) The department may enter into cooperative and reciprocal agreements with the bank regulatory authority of any government for the periodic examination of banking offices and facilities of any kind, including domestic international banking facilities, located within this state and may accept records from such authorities in lieu of conducting its own examination for compliance with laws of this state. (Ga. L. 1981, p. 770, § 5.)

## ARTICLE 6

### BUSINESS DEVELOPMENT CORPORATIONS

#### 7-1-740. Definitions.

As used in this article, the term:

(1) "Board of directors" means any board of directors of a corporation created under this article.

(2) "Corporation" means a Georgia business development corporation created under this article or existing on April 1, 1975, pursuant to the former "Georgia Business Development Corporation Act of 1972," approved April 3, 1972 (Ga. L. 1972, p. 798).

(3) "Lending institution" means any bank or trust company, building and loan association, savings and loan association, insurance company or related corporation, partnership, foundation, pension fund, or other institution engaged primarily in lending or investing funds.

(4) "Loan limit" means, for any member, the maximum amount permitted to be outstanding at any one time on member loans made by such member to the corporation, as determined under this article.

(5) "Member" means any lending institution authorized to do business in this state which shall undertake to make member loans to a corporation created under this article, upon its call, and in accordance with this article.

(6) "Member loan" means a loan made by a member upon the call of the corporation pursuant to Code Section 7-1-747. (Ga. L. 1972, p. 798, § 2; Code 1933, § 41A-3401, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 37; Ga. L. 1981, p. 965, § 1; Ga. L. 1982, p. 3, § 7.)

**Editor's notes.** — The Georgia Business Development Corporation Act of 1972 (Ga. L. 1972, p. 798), referred to in paragraph (2) of this section, was repealed by Ga. L. 1974, p. 705, § 3(k).

### **7-1-741. Contents, execution, and presentation of articles.**

(a) Five or more persons competent to contract, a majority of whom shall be residents of this state, who may desire to create a business development corporation under this article, for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the State of Georgia and, to that end, to exercise the powers and privileges provided in this article, may be incorporated by presenting articles to the Secretary of State, as provided in this Code section and Code Section 7-1-742. The articles shall contain:

(1) The name of the corporation, which shall include the words "Business Development Corporation of Georgia," and a recitation that the corporation is organized under this article;

(2) The location of its initial registered office, but such corporation may have branch offices in such other places within the state as may be fixed by the board of directors;

(3) The purposes for which the corporation is founded, which shall include: to promote, stimulate, develop, and advance the business prosperity and economic welfare of the State of Georgia and its citizens; to encourage and assist, through loans, investments, or other business transactions, in the location of the business and industry in this state and to rehabilitate and assist existing business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state; to provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; similarly to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state;

(4) The names and post office addresses of the members of the first board of directors, who, unless otherwise provided by the articles or the bylaws, shall hold office for the first year of existence of the corporation or until their successors are elected and have qualified;

(5) Any provisions which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, dividing, limiting, and regulating the powers of the corporation, the directors, shareholders, or any class of the shareholders, including, but not limited to, a list of the officers, and provisions governing the issuance of stock certificates to replace lost or



destroyed certificates, provided that no provision shall be contained for cumulative voting for directors; and

(6) The amount and number of authorized shares, the par value of each share, and the minimum amount of capital with which it shall do business and, if there is more than one class of stock, a description of the different classes, the names and post office addresses of the subscribers of stock, and the number of shares subscribed by each. The aggregate of the subscription shall be the minimum amount of capital with which the corporation shall commence business, which shall not be less than \$100,000.00.

The articles may also contain any provisions consistent with the laws of this state for the regulation of the affairs of the corporation.

(b) The articles shall be in writing, subscribed by the incorporators, and acknowledged by each of them before an officer authorized to take acknowledgments. A copy of the articles so subscribed and acknowledged shall be filed with the department for approval. (Ga. L. 1972, p. 798, § 3; Code 1933, § 41A-3402, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 965, § 2.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18A Am. Jur. 2d, Corporations, §§ 199-211.

**C.J.S.** — 18 C.J.S., Corporations, §§ 25-40.

#### **7-1-742. Action on articles by department; preconditions to doing business.**

The department shall not approve the articles until at least 15 lending institutions authorized to do business in this state have agreed in writing to become members of said corporation; and said written agreement shall be filed with the department with the articles, and the filing of same shall be a condition precedent to the approval of the articles by the department. Whenever the articles shall have been filed in the office of the Secretary of State and approved by the department and all filing fees and taxes prescribed by law have been paid, the subscribers, their successors, and assigns shall constitute a corporation. Said corporation shall not be authorized to commence business until its articles are approved by the department. Upon such approval by the department, authorized stock of the corporation may thereafter be issued. (Ga. L. 1972, p. 798, § 4; Ga. L. 1973, p. 536, § 1; Code 1933, § 41A-3403, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 25.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18A Am. Jur. 2d, Corporations, §§ 215, 216.

**C.J.S.** — 18 C.J.S., Corporations, §§ 45-66.

**7-1-743. Approval or disapproval of department.**

(a) Upon receipt of an application for approval of articles from a corporation organized pursuant to this article, the department shall exercise its discretion in its consideration of the application; but the department shall not approve the application until it has ascertained to its satisfaction:

(1) That the public need and advantage will be promoted by the establishment of the corporation;

(2) That conditions in the locality in which the corporation will transact business afford reasonable promise of a successful operation;

(3) That the applicants may legally invest in the stock of the corporation and that such investment would not be to the detriment of the applicants;

(4) That the proposed members are in good standing with their respective supervisory authorities; and

(5) That the proposed officers and directors have sufficient experience, ability, and standing to afford reasonable promise of a successful operation.

(b) Within 90 days after receipt of an application for approval of the articles, the department shall issue a certificate either granting or denying permission for the corporation to commence business, provided that in no instance shall the department grant such permission until it has ascertained to its satisfaction that the above conditions and circumstances have been met and that the articles are in accordance with this article. (Ga. L. 1973, p. 536, § 2; Code 1933, § 41A-3404, enacted by Ga. L. 1974, p. 705, § 1.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 18A Am. Jur. 2d, Corporations, § 214.

**C.J.S.** — 18 C.J.S., Corporations, §§ 45-66.

**7-1-744. Filing of articles.**

Upon receiving the approval of the department, the incorporators shall file the same together with the fee specified by Code Section 7-1-862 with the Secretary of State. (Code 1933, § 41A-3405, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 946, § 71; Ga. L. 1989, p. 1257, § 26.)

**Editor's notes.** — The amendment to this Code section by Ga. L. 1989, p. 946, § 71, was superseded by the amendment by Ga. L. 1989, p. 1257, § 26.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 18A Am. Jur. 2d, Corporations, § 214.

**C.J.S.** — 18 C.J.S., Corporations, §§ 33-37.

**7-1-745. Powers of corporation.**

In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations by the laws of this state, the corporation shall, subject to the restrictions and limitations contained in this Code section, have the following powers:

(1) To elect, appoint, and employ officers, agents, and employees;

(2) To make contracts and incur liabilities for any of the purposes of the corporation provided that the corporation shall not incur any secondary liability by way of the guaranty or endorsement of the obligations of any person or corporation or in any other manner unless the corporation has a substantial interest in the performance of the transaction;

(3) To borrow money and to do all things necessary or desirable to secure aid, assistance, loans, and other financing from its members (whether as member loans or otherwise), from any lending institution, or from any agency established under the Small Business Investment Act of 1958, as amended, or other similar federal or state legislation for any of the purposes of the corporation and to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchise, rights, and privileges of every kind and nature or any part thereof or interest therein without securing shareholder or member approval;

(4) To make loans to any person or corporation and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and services connected therewith;

(5) To purchase, receive, hold, lease, or otherwise acquire and to sell, convey, transfer, lease, or otherwise dispose of commercial or historical real and personal property and residential projects referred to the corporation by its shareholders or members, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

(6) To acquire the good will, business rights, real and personal property, and other assets or any part thereof or interest therein of any persons or corporations and to assume, undertake, or pay the obligations,



debts, and liabilities of any such person or corporation; to acquire improved or unimproved real estate for the purpose of constructing residential buildings, industrial plants or business establishments thereon or for the purposes of disposing of such real estate to others for the construction of residential buildings, industrial plants, industrial parks, or business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of residential buildings, industrial plants, industrial parks, or business establishments;

(7) To acquire, subscribe for, own, sell, hold, assign, transfer, mortgage, pledge, or otherwise dispose of a partnership interest in any partnership or other entity or the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in or indebtedness of any person or corporation and, while the owner or holder thereof, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;

(8) To mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in paragraph (5), (6), or (7) of this Code section, as security for the payment of any part of the purchase price therefor;

(9) To cooperate with and avail itself of the facilities of the United States Department of Commerce, the Department of Economic Development, and any other similar state or federal governmental agencies and to cooperate with and assist and otherwise encourage organizations in the various communities of this state in the promotion, assistance, and development of the business prosperity and economic well-being of such communities or of this state or any political subdivision thereof;

(10) To redeem or otherwise reacquire its shares under the circumstances and subject to the restrictions now or hereafter set forth for business corporations by the laws of this state;

(11) To make, amend, and repeal bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation, which bylaws may establish internal governance procedures and standards, including, but not limited to, procedures for voting by proxy at and for giving notice of meetings of directors and of shareholders and members, procedures and standards for the payment of dividends, and the delegation by the board of directors of its authority under the articles of incorporation and this article to one or more committees of the board or to officers of the corporation, and which bylaws may give the board of directors or committees thereof the power to pass resolutions necessary or convenient to carry out the purposes of the corporation; and

(12) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article. (Ga. L. 1972, p. 798, § 5; Code

1933, § 41A-3406, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 965, § 3; Ga. L. 1989, p. 1641, § 2; Ga. L. 1991, p. 1100, § 1; Ga. L. 2001, p. 967, § 1; Ga. L. 2004, p. 690, § 1.)

**The 2004 amendment**, effective July 1, 2004, substituted “Department of Economic Development” for “Department of Industry, Trade, and Tourism” near the beginning of paragraph (9).

**Editor’s notes.** — Ga. L. 1989, p. 1641, § 18, not codified by the General Assembly, provides: “In the event of any substantive conflict between this Act and any other Act of the 1989 General Assembly, such other Act shall control over this Act.”

Ga. L. 1991, p. 1100, § 2, not codified by the General Assembly, provides: “This Act shall apply to all loan applications received

on or after July 1, 1991, by a business development corporation organized pursuant to Article 6 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated.”

**U.S. Code.** — The Small Business Investment Act of 1958 referred to in paragraph (3) of this section, is codified as 15 U.S.C. §§ 77c, 77ddd, 80a-18, 633, 636, 661 et seq. and 18 U.S.C. §§ 212, 213, 216, 657, 1006, 1014.

**Law reviews.** — For article, “Business Associations,” see 53 Mercer L. Rev. 109 (2001).

RESEARCH REFERENCES

**Am. Jur. 2d.** — 18B Am. Jur. 2d, Corporations, §§ 1990-2008.

**C.J.S.** — 19 C.J.S., Corporations, § 554 et seq.

7-1-746. Right to deal in corporation’s stock or obligations.

Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) Any person, including all domestic corporations organized for the purpose of carrying on business within this state and further including, without implied limitation, public utility companies and insurance companies and foreign corporations licensed to do business within this state and all lending institutions as defined in paragraph (3) of Code Section 7-1-740 and all trusts are authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by or the shares of the corporation and, while owners of said shares, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state, except as otherwise provided in this article;

(2) All lending institutions are authorized to become members of the corporation and to make loans to the corporation as provided in this article;

(3) Each lending institution which becomes a member of the corporation is authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by or the shares of the capital stock of

the corporation and, while owners of said stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the State of Georgia, provided that the amount of the capital of the corporation which may be acquired by any member pursuant to the authority granted in this Code section shall not exceed 5 percent of the capital base of such member; and

(4) The amount of shares of the corporation which any member is authorized to acquire pursuant to the authority granted in this Code section is in addition to the amount of shares in the corporation which such member may otherwise be authorized to acquire. (Ga. L. 1972, p. 798, § 6; Code 1933, § 41A-3407, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 38; Ga. L. 1989, p. 14, § 7.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 19 Am. Jur. 2d, Corporations, §§ 2061-2065, 2072-2076.

**C.J.S.** — 19 C.J.S., Corporations, §§ 658-698.

#### 7-1-747. Applying for membership; loans by members.

(a) Any lending institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by said board.

(b) Each member of the corporation shall make member loans to the corporation when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits for member loans may, at the option of the board of directors, be established at the \$1,000.00 amount nearest the amount computed in accordance with this Code section; and

(2) No member loan to the corporation shall be made if immediately thereafter the total amount of the obligations (whether under member loans or otherwise) of the corporation would exceed 50 times the amount then paid in on the capital of the corporation.

(c) The total amount outstanding on member loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital of the corporation then held by such member, shall not exceed the lesser of:

(1) Twenty percent of the aggregate of the capital of the corporation then outstanding plus the total amount then outstanding on all member loans to the corporation, including in said total amount outstanding amounts validly called as member loans but not yet loaned; or



(2) The following limit, to be determined each calendar year of membership on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding or, in the case of an insurance company, its last annual statement to the Commissioner of Insurance:

(A) Five percent of the statutory capital base of a bank or trust company;

(B) One-half of 1 percent of the total outstanding loans made by building and loan or savings and loan associations;

(C) Two and one-half percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies;

(D) Two and one-half percent of the unassigned surplus of mutual insurance companies, except fire insurance companies;

(E) One-tenth of 1 percent of the assets of fire insurance companies; and

(F) Such limits as may be approved by the board of directors of the corporation for other lending institutions; or

(3) Three million dollars.

(d) Subject to paragraphs (1) and (3) of subsection (c) of this Code section, each call for member loans made by the corporation shall be apportioned among the members of the corporation in such manner that, to the extent feasible, all members shall, after making such member loans, have adjusted loan limits constituting an equal percentage of their respective loan limits. The adjusted loan limit of a member shall be the amount of such member's loan limit, as determined by reference to subsection (c) of this Code section, reduced by the balance of outstanding member loans made by such member to the corporation and the investment in capital of the corporation held by such member at the time of such call.

(e) All member loans to the corporation shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times and which shall bear interest at a rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans plus one-fourth of 1 percent or less. (Ga. L. 1972, p. 798, § 7; Code 1933, § 41A-3408, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 39; Ga. L. 1981, p. 965, § 4; Ga. L. 1987, p. 1059, § 1; Ga. L. 1996, p. 732, § 1; Ga. L. 2001, p. 967, § 2.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1987, "Commissioner of Insurance" was substituted for "Insur-

ance Commissioner" in paragraph (2) of subsection (c).

Pursuant to Code Section 28-9-5, in 1988,

in paragraph (b)(1) "limits" was substituted for "limit."

**7-1-748. Duration of membership; withdrawal.**

(a) Membership in the corporation shall be for the duration of the corporation, provided that, upon written notice given to the corporation two years in advance, a member may withdraw from membership in the corporation at the expiration of such notice.

(b) A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to notice of the intended withdrawal of said member. (Ga. L. 1972, p. 798, § 8; Code 1933, § 41A-3409, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-749. Powers of shareholders and members; voting.**

(a) The shareholders and the members of the corporation shall have the following powers of the corporation:

(1) To determine the number of and elect directors as provided in Code Section 7-1-751;

(2) To amend its articles as provided in Code Section 7-1-750;

(3) To dissolve the corporation as provided in Code Section 7-1-756; and

(4) To exercise such other of the powers of the corporation, consistent with this article, as may be conferred on the shareholders and the members by the bylaws.

(b) As to all matters requiring action by the shareholders and the members of the corporation, said shareholders and said members shall vote separately thereon by classes; and, except as otherwise provided in this article, such matters shall require the affirmative vote of a majority of the votes to which the shareholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

(c) Each shareholder shall have one vote, in person or by proxy, for each share of stock held by him; and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than \$1,000.00 shall have one additional vote, in person or by proxy, for each additional \$1,000.00 which such member is authorized to have outstanding on loans to the corporation at any one time, as determined under subsection (c) of Code Section 7-1-747.

(d) A holder of or subscriber to shares of the corporation or a member of the corporation shall be under no obligation to the corporation or its

creditors with respect to such shares, subscriptions, or membership except in the circumstances set forth in Code Section 14-2-620, except that this subsection does not affect the obligation of a member to lend funds to the corporation pursuant to valid call. (Ga. L. 1972, p. 798, § 9; Code 1933, § 41A-3410, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 965, § 5; Ga. L. 1989, p. 946, § 72.)

#### **7-1-750. Amendment of articles.**

(a) Except as provided in subsections (b) and (c) of this Code section and subject to the approval of the department, the articles may be amended by the votes of the shareholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds of the votes to which the members shall be entitled.

(b) No amendment shall be adopted which is inconsistent with the general purposes expressed in paragraph (3) of subsection (a) of Code Section 7-1-741 or which authorizes any additional class of stock to be issued or which would tend to impair the ability of the department to examine and supervise the corporation.

(c) No amendment of the articles which increases the obligation of a member to make loans to the corporation or makes any change in the principal amount, interest rate, or maturity date or in the security or credit position of any outstanding loan of a member to the corporation or affects a member's right to withdraw from membership as provided in Code Section 7-1-748 or affects a member's voting rights as provided in this article shall be made without the consent of each member affected by such amendment.

(d) Within 30 days after any meeting at which an amendment to the articles is approved, it shall be submitted to the department together with such information as the department shall require. If the department finds in its discretion that the proposed amendment is in conformity with the objectives and requirements of this article, it shall issue its certificate approving the amendment. If the amendment is disapproved, the department shall briefly state its reasons for such action to the corporation. The decision of the department shall be conclusive, except as it may be subject to judicial review as provided in Code Section 7-1-90.

(e) Upon the approval of the department, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and due adoption thereof, shall, together with the department's certificate of approval, be submitted to the Secretary of State, who shall examine them and, if he finds that they conform to the requirements of this article, shall so certify and endorse his approval thereon. (Ga. L. 1972, p. 798, § 10; Code 1933, § 41A-3411, enacted by Ga. L. 1974, p. 705, § 1.)



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d, Corporations, §§ 91, 92.

**C.J.S.** — 18 C.J.S., Corporations, § 38.

**7-1-751. Board of directors; officers and agents.**

The business affairs of the corporation shall be managed and controlled by a board of directors, a president, a vice-president, a secretary, a treasurer, and such other officers and such agents as the corporation shall authorize by its bylaws. The board of directors shall consist of such number, not less than 15 nor more than 21, as shall be determined in the first instance by the incorporators and thereafter annually by the members and the shareholders of the corporation. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the shareholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies except vacancies in the office of director, which shall be filled as provided in this Code section. The annual meeting shall be held prior to May 1 or, if no annual meeting shall be held in the year of incorporation, then within 90 days after the approval of the articles at a special meeting as provided in this Code section. At such annual meeting or at each special meeting held as provided in this Code section, the members of the corporation shall elect two-thirds of the board of directors and the shareholders shall elect the remaining directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after the election and until their successors are elected and qualified, unless sooner removed in accordance with provisions of the bylaws. Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the shareholders shall be filled by the directors elected by the shareholders. Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the willful misconduct of such directors and officers. (Ga. L. 1972, p. 798, § 11, Code 1933, § 41A-3412, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 40; Ga. L. 1981, p. 965, § 6.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 18B Am. Jur. 2d, Corporations, § 1341 et seq.

**C.J.S.** — 19 C.J.S., Corporations, § 433 et seq.

**7-1-752. Earned surplus; fiscal year.**

(a) Each year the corporation shall set apart as earned surplus not less than 10 percent of its net earnings for all the preceding fiscal year until such surplus shall be equal in value to one-half of the amount paid in on the

capital then outstanding. Whenever the amount of surplus established in this Code section shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors after providing for such reserves as said directors deem desirable, and the determination of the directors made in good faith shall be conclusive on all persons.

(b) Corporations organized under this article shall adopt the calendar year as their fiscal year. (Ga. L. 1972, p. 798, §§ 12, 21; Code 1933, § 41A-3413, enacted by Ga. L. 1974, p. 705, § 1.)

#### **7-1-753. Deposit of corporate funds; corporation not to accept deposits.**

The corporation shall not deposit any of its funds in any bank or other financial institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated. The corporation shall not receive money on deposit. (Ga. L. 1972, p. 798, § 13; Code 1933, § 41A-3414, enacted by Ga. L. 1974, p. 705, § 1.)

#### **7-1-754. Supervision.**

The department shall exercise the same power and authority over corporations organized under this article as is now or hereafter exercised over banks and trust companies by Articles 1 and 2 of this chapter where such law is not in conflict with this chapter. (Ga. L. 1972, p. 798, § 14; Ga. L. 1973, p. 536, § 3; Code 1933, § 41A-3415, enacted by Ga. L. 1974, p. 705, § 1.)

#### **7-1-755. First meeting and organization.**

(a) The first meeting of the corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed or delivered to each incorporator at least five days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

(b) At such first meeting the incorporators shall organize by the choice, by ballot, of a temporary clerk; by the adoption of bylaws; by the election, by ballot, of directors; and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings.

Four of the incorporators shall be a quorum for the transaction of business. (Ga. L. 1972, p. 798, § 15; Code 1933, § 41A-3416, enacted by Ga. L. 1974, p. 705, § 1.)

#### **7-1-756. Duration and dissolution of corporation.**

(a) The period of duration of a corporation organized under this article shall be 35 years, subject, however, to the right of its shareholders and the members to dissolve the corporation prior to the expiration of said period as provided in subsection (b) of this Code section, and further subject to any longer period of duration as may be specified in the articles of incorporation as originally filed and approved or as thereafter amended pursuant to Code Section 7-1-750.

(b) The corporation may, upon the votes of the shareholders and the members of the corporation, voting separately by classes, dissolve said corporation; and such dissolution shall require approval by the affirmative vote of two-thirds of the votes to which the shareholders shall be entitled. Upon any dissolution of the corporation, none of the corporation's assets shall be distributed to the shareholders until all sums due the members of the corporation as creditors thereof have been paid in full. (Ga. L. 1972, p. 798, §§ 16, 17; Code 1933, § 41A-3417, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1987, p. 1059, § 2.)

#### **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 19 Am. Jur. 2d, Corporations, § 2750.

**C.J.S.** — 19 C.J.S., Corporations, §§ 811-882.

**ALR.** — Propriety of applying minority discount to value of shares purchased by corporation or its shareholders from minority shareholders, 13 ALR5th 840.

#### **7-1-757. State credit not pledged.**

Under no circumstances shall the credit of the State of Georgia be pledged to any corporation organized under this article nor shall acts of such corporation in any manner constitute or result in the creation of any indebtedness of the State of Georgia or any county or municipal corporation therein. (Ga. L. 1972, p. 798, § 18; Code 1933, § 41A-3418, enacted by Ga. L. 1974, p. 705, § 1.)

#### **7-1-758. Tax exemptions; state and local occupational license taxes.**

(a) Any tax exemptions, tax credits, or tax privileges granted to banks or trust companies, building and loan associations, and other financial institutions by any general laws of this state are granted to corporations organized pursuant to this article.

(b) Every corporation organized and engaged in business under this article shall pay an annual state occupational license tax of \$50.00. Counties



and municipalities are authorized, in addition, to levy the occupational license taxes as prescribed; provided, however, that no county or municipality shall levy any such occupational license tax in a greater amount than those prescribed. (Ga. L. 1972, p. 798, §§ 19, 20; Code 1933, § 41A-3419, enacted by Ga. L. 1974, p. 705, § 1.)

## ARTICLE 7

### BUILDING AND LOAN ASSOCIATIONS AND SAVINGS AND LOAN ASSOCIATIONS

**Cross references.** — Authority of building and loan associations and savings and loan associations to invest in projects involving redevelopment of blighted areas, etc., § 8-4-12. Appointment of building and loan associations and federal savings and loan associations as state depositories of state funds, § 50-17-50 et seq.

**Administrative rules and regulations.** — Building and loan associations generally, Of-

ficial Compilation of Rules and Regulations of State of Georgia, Rules of Department of Banking and Finance, Chapter 80-4-1.

**Law reviews.** — For article discussing the consolidation of laws dealing with various types of financial organizations into the Financial Institutions Code of Georgia, see 11 Ga. St. B.J. 225 (1975). For article, "Small Loans Under Georgia Laws," see 3 Mercer L. Rev. 227 (1952).

### RESEARCH REFERENCES

**ALR.** — Construction of savings bank by-law expressly assented to by depositor, relieving bank from liability for payment to unauthorized person, 52 ALR 760.

Constitutionality, construction, and effect of statutes relating to inspection, dissolution and liquidation of building and loan associations, 78 ALR 1090.

Right of borrowing member of building and loan association to tender matured stock purchased from nonborrowing members, 85 ALR 968.

Power of building and loan association to borrow money to pay withdrawing members holding either matured or partially matured stock, 87 ALR 1156.

Basis of settlement between building and loan association and borrowing member during solvency of association, 98 ALR 6.

Constitutionality of statute changing

rights of withdrawing members of building and loan association, 98 ALR 82, 133 ALR 1493.

Status of holder of withdrawn, matured, prepaid, and preferred stock in building and loan association and resulting rights and liabilities, 98 ALR 89.

Determination of "withdrawal value" of unmatured shares in building and loan association, 98 ALR 142.

Right of building and loan association to transfer to third person loan made to borrowing member, 112 ALR 459.

Purchase or retirement of stock by building and loan association at a price less than its withdrawal value, 134 ALR 1212.

Uniform Stock Transfer Act as applicable to shares in savings and loan associations or building and loan associations, 143 ALR 1152.

### 7-1-770. Definitions.

(a) As used in this article, the term:

(1) "Building and loan association" means a local mutual association existing under the laws of this state on April 1, 1975, or organized under this article without capital stock which:

(A) Is authorized to receive deposits but shall not have the power to offer third-party payment services except in the same manner and subject to the same provisions as are set forth in Code Section 7-1-670 for credit unions;

(B) Receives the greater portion of its funds from such deposits; and

(C) Lends the greater portion of its funds on the security of first liens or security titles on homes and on the security of first liens on its own deposits.

(2) "Deposit" means any arrangement whereby a withdrawable interest is created in a building and loan association or whereby the building and loan association becomes indebted to a person transferring to it money, commercial paper, or similar items for the payment of money, whether called a "share," "account," "certificate," "share account," "savings account," "deposit," "savings deposit," "deposit account," or otherwise.

(b) An association is "local" within the meaning of this article if the greater portion of its investment in real estate loans is limited to loans on the security of a first lien or security title on real estate. Any such association may purchase real estate loans or interests in real estate loans which are made and owned by other associations qualified under the building and loan statutes of their respective states or from any savings and loan association to the extent authorized by the regulations of the department, provided that such regulations shall not permit the purchase of loans or interests in loans of any type or in any amounts (per individual loan or in the aggregate) which are not permitted by law to be purchased by savings and loan associations with principal offices in this state.

(c) An association is "mutual" if all depositors in such association participate in the income of such association and if all borrowers are privileged to vote at least one vote at any meeting of members, it being unnecessary that any borrower should subscribe to or purchase any shares or be entitled to participate in any way in the income of such association. (Ga. L. 1937-38, Ex. Sess., p. 307, § 2; Ga. L. 1945, p. 263, § 2; Ga. L. 1965, p. 473, § 1; Code 1933, § 41A-3501, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 16; Ga. L. 1982, p. 3, § 7.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 4 et seq.

**C.J.S.** — 12 C.J.S., Building and Loan Associations, § 2.

**ALR.** — Power of savings bank or similar institution to provide checking facilities or

negotiable orders of withdrawal (NOW) to customers, 64 ALR3d 1314.

Promissory estoppel of lending institution based on promise to lend money, 18 ALR5th 307.

**7-1-771. Members of building and loan association; voting.**

All depositors of the building and loan association and all borrowers from it, all persons assuming or obligated upon loans made or held by it, and all persons buying the property securing loans made by such association subject to such loans shall be members of such association. At all meetings of the members of such association each borrower and each obligor upon a loan and each owner of property subject to a loan shall be entitled to one vote as such borrower, obligor, or owner. Depositors, whether borrowers or not, shall be entitled to vote as otherwise provided by law or the regulations of the department. (Ga. L. 1945, p. 263, § 1; Code 1933, § 41A-3502, enacted by Ga. L. 1974, p. 705, § 1.)

**RESEARCH REFERENCES**

**C.J.S.** — 12 C.J.S., Building and Loan Associations, § 31, 39.

**ALR.** — Basis of settlement between borrowing member and building and loan association which becomes insolvent before stock matures, 50 ALR 533; 113 ALR 240

Right of borrowing member of building

and loan association to tender matured stock purchased from nonborrowing members, 85 ALR 968.

Right of building and loan association to set off, against withdrawal value or right of stock, an independent indebtedness of member, 88 ALR 621.

**7-1-772. Presentation, contents, and execution of articles of building and loan association.**

(a) Five or more persons competent to contract, a majority of whom shall be residents of this state, who may desire to create a building and loan association under this article shall present articles as described in this Code section to the Secretary of State. The articles shall contain:

- (1) The name of the building and loan association;
- (2) A recitation that it is being organized under this article;
- (3) The county of its location;
- (4) The location where its initial registered offices will be located;
- (5) The period of its duration, which shall be perpetual unless otherwise limited;
- (6) The number of directors constituting the initial board of directors and the name and address of each person who is to serve as a member thereof;
- (7) The name and address of each incorporator; and
- (8) Any provision which the incorporators may choose to insert for the regulation of the business and affairs of the association.

(b) The articles shall be in writing, subscribed by the incorporators, and acknowledged by each of them before an officer authorized to take



acknowledgments. The articles shall be filed and processed in accordance with subsection (c) of Code Section 7-1-392. (Code 1933, § 41A-3503, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 189 et seq.

**C.J.S.** — 12 C.J.S., Building and Loan Associations, § 12.

#### **7-1-773. Approval or disapproval of articles of building and loan association by department.**

Reserved. Repealed by Ga. L. 1989, p. 1257, § 27, effective July 1, 1989.

**Editor's notes.** — The former Code section was based on Ga. L. 1937-38, Ex. Sess., p. 307, § 6; Ga. L. 1973, p. 533, § 1; Code

1933, § 41A-3504, enacted by Ga. L. 1974, p. 705, § 1.

#### **7-1-774. Approval of articles of building and loan association; renewals or amendments to existing charters.**

Reserved. Repealed by Ga. L. 1989, p. 1257, § 28, effective July 1, 1989.

**Editor's notes.** — The former Code section was based on Ga. L. 1937-38, Ex. Sess., p. 307, § 6; Ga. L. 1973, p. 533, § 1; Code

1933, § 41A-3505, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 41.

#### **7-1-775. Filing and processing articles of incorporation and amendments for building and loan association.**

Articles of incorporation for a building and loan association shall be filed and processed in accordance with the provisions contained in Part 8 of Article 2 of this chapter. Articles of amendment to articles of incorporation for a building and loan association shall be filed and processed in accordance with the provisions contained in Part 13 of Article 2 of this chapter. (Code 1933, § 41A-3506, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 41; Ga. L. 1989, p. 1257, § 29.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 102, 189 et seq.

**C.J.S.** — 12 C.J.S., Building and Loan Associations, § 13.

#### **7-1-776. Certificate of incorporation or amendment issued by Secretary of State.**

Upon compliance with Code Section 7-1-395 or 7-1-516, the Secretary of State shall issue to the incorporators or the building and loan association a certificate of incorporation or amendment, as the case may be. (Code 1933, § 41A-3507, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 30.)

## RESEARCH REFERENCES

**C.J.S.** — 12 C.J.S., Building and Loan Associations, § 11.

**7-1-777. Principal and branch offices.**

No building and loan association or savings and loan association or similar corporation existing under the laws of this state or of the United States shall accept deposits in this state except on the premises of an established principal office or branch office operated pursuant to this article. For the purposes of this Code section, the term “branch office” shall be construed to mean any office of such association or corporation which is intended to be permanently established in a fixed location and to be operated at such location on substantially a full-time basis. (Ga. L. 1973, p. 653, § 1; Code 1933, § 41A-3508, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-778. Rules and regulations governing building and loan associations.**

Without limitation on the authority conferred by Article 1 of this chapter, the department may adopt reasonable rules and regulations governing the operation of building and loan associations, provided the same are not in conflict with any of the provisions of this article. Such rules and regulations shall provide for reasonable bonds for all officers and employees of building and loan associations handling moneys and reasonable limitations on the type of real estate on which funds may be loaned and the percentage of value to be loaned; and the department shall have power to adopt other reasonable rules and regulations to protect all funds deposited by the public in the building and loan associations. (Ga. L. 1937-38, Ex. Sess., p. 307, § 8; Code 1933, § 41A-3509, enacted by Ga. L. 1974, p. 705, § 1.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 186 et seq.

**C.J.S.** — 12 C.J.S., Building and Loan Associations, § 5.

**ALR.** — Right of building and loan association to set off, against withdrawal value or right of stock, an independent indebtedness of member, 88 ALR 621.

**7-1-779. Use of “savings and loan,” “building and loan,” or other terms likely to mislead public as to nature of business.**

No person or corporation, except a building and loan association or a savings and loan association actually engaged in carrying on a building and loan or savings and loan business as contemplated by this article or the laws of the United States, shall transact business under any name or title which contains the terms “savings and loan” or “building and loan” or combination of the words used in said phrases or use any sign or any letterhead or billhead, circular, or paper of any kind or advertise in any manner which

indicates that his or its business is the character or kind of business carried on or transacted by a building and loan or savings and loan association or which is likely to lead the public to believe that his or its business is that of a building and loan or savings and loan association. (Ga. L. 1937-38, Ex. Sess., p. 307, § 10; Code 1933, § 41A-3510, enacted by Ga. L. 1974, p. 705, § 1.)

**Cross references.** — Regulations pertaining to use of names by financial institutions generally, § 7-1-130.

### OPINIONS OF THE ATTORNEY GENERAL

**Foreign state building and loan associations.** — Since building and loan associations are defined as local mutual associations under former Code 1933, § 41A-3501 (see O.C.G.A. § 7-1-770), foreign state building and loan associations are prohibited from directly or indirectly establishing loan production offices in Georgia under former Code 1933, § 41A-3510 (see O.C.G.A. § 7-1-779). 1978 Op. Att’y Gen. No. 78-70.

**A foreign state savings and loan association** may not transact business in Georgia under any name containing the terms “savings and loan,” nor may it advertise in any manner which indicates that its business is the kind carried on by a savings and loan association. 1983 Op. Att’y Gen. No. 83-23.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 188.

**C.J.S.** — 12 C.J.S., Building and Loan Associations, § 14.

### 7-1-780. Lien on deposits to secure loans.

To secure loans, building and loan associations and savings and loan associations shall have a lien without further agreement or pledge upon all deposits with it by a borrower; and, upon default upon any loan, any such association may, without notice to or consent of the borrower, cancel on its books part or all of the amount outstanding to the credit of the borrower not exceeding his obligations to the association and apply such amount in payment of the obligations. (Ga. L. 1937-38, Ex. Sess., p. 307, § 11; Code 1933, § 41A-3511, enacted by Ga. L. 1974, p. 705, § 1.)

### JUDICIAL DECISIONS

**A “freeze” on checking account funds did not violate the automatic stay provisions of the Bankruptcy Code.** Georgia Fed. Bank v.

Owens-Peterson, 39 Bankr. 186 (Bankr. N.D. Ga. 1984).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 870.

**C.J.S.** — 12 C.J.S., Building and Loan Associations, § 44.



**ALR.** — Bank's right of setoff, based on account standing in names of debtor and debit of one depositor, against funds in another, 68 ALR3d 192.

**7-1-781. Conversion into savings and loan association.**

Any building and loan association or other financial institution existing under the laws of this state doing a home financing business may convert itself into a savings and loan association in accordance with Section 5 of the Home Owners' Loan Act of 1933, 12 U.S.C. Section 1464, upon a vote of 51 percent or more of the votes of the members cast at an annual meeting or at any special meeting called to consider such action. (Ga. L. 1937-38, Ex. Sess., p. 307, § 12; Code 1933, § 41A-3512, enacted by Ga. L. 1974, p. 705, § 1.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 235 et seq.

**7-1-782. Effect of conversion into savings and loan association.**

Upon the conversion of any building and loan association into a savings and loan association, the corporate existence of such association shall not terminate, but such savings and loan association shall be deemed to be a continuation of the entity of the building and loan association so converted. All property of the converted building and loan association, including its rights, titles, and interests in and to all property of whatsoever kind, whether real, personal, or mixed, and choses in action and every right, privilege, interest, and assets of any conceivable value or benefit then existing or pertaining to it or which inure to it, shall immediately, by act of law and without any conveyance or transfer and without any further act or deed, remain and be vested in and continue to be the property of such savings and loan association into which the building and loan association has converted itself; and such savings and loan association shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the converting building and loan association. Such savings and loan association, as of the time of the taking effect of such conversion, shall continue to have and succeed to all of the rights, obligations, and relations of the converting building and loan association. All pending actions and other judicial proceedings to which the converting building and loan association is a party shall not be deemed to have abated or to have discontinued by reason of such conversion but may be prosecuted to final judgment, order, or decree in the same manner as if such conversion had not been made; and such savings and loan association resulting from such conversion may continue such action in its corporation name; and any judgment, order, or decree may be rendered for or against the converting building and loan association theretofore involved in such

judicial proceedings. (Ga. L. 1937-38, Ex. Sess., p. 307, § 12; Code 1933, § 41A-3513, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-783. Previous conversions into savings and loan associations ratified.**

Any building and loan association or corporation which has converted itself prior to April 1, 1975, into a savings and loan association under the Home Owners' Loan Act of 1933 and has received a charter from the Federal Home Loan Bank Board shall be recognized as a savings and loan association, and its federal charter shall be given full credence by the courts of this state to the same extent as if such conversion had taken place under this article. (Ga. L. 1937-38, Ex. Sess., p. 307, § 12; Code 1933, § 41A-3514, enacted by Ga. L. 1974, p. 705, § 1.)

**U.S. Code.** — The Home Owners' Loan Act of 1933, referred to in this section, is codified as 12 U.S.C. § 1461 et seq.

**7-1-784. Conversion into building and loan association.**

Any savings and loan association may convert itself into a building and loan association under this article upon a vote of 51 percent or more of the votes of members of such savings and loan association cast at any annual meeting or at any special meeting called to consider such action. (Ga. L. 1937-38, Ex. Sess., p. 307, § 12; Code 1933, § 41A-3515, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-785. Effect of conversion into building and loan association.**

All of the provisions regarding property and other rights contained in Code Section 7-1-782 shall apply, in reverse order, to the conversion of a savings and loan association into a building and loan association operating under this article so that the building and loan association shall be a continuation of the corporate entity of the converting savings and loan association and continue to have all of its property and rights. (Ga. L. 1937-38, Ex. Sess., p. 307, § 12; Code 1933, § 41A-3516, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-786. Taxation.**

No building and loan association or savings and loan association with a home office in this state shall be assessed or subjected to taxation by the state or any county, municipality, or other political subdivision taxing authority on its franchise, capital, reserves, surplus, loans, shares, or accounts; except that any real property and any tangible personal property not hereinbefore specifically mentioned, which may be owned by it, shall be subject to taxation to the same extent, according to its value, as all other real

and tangible personal property is taxed. (Ga. L. 1937-38, Ex. Sess., p. 307, § 13; Code 1933, § 41A-3517, enacted by Ga. L. 1974, p. 705, § 1.)

### JUDICIAL DECISIONS

**Discussion of meaning of term franchise.** — See *City of Griffin v. First Fed. Sav. & Loan Ass'n*, 80 Ga. App. 217, 55 S.E.2d 771 (1949).

**Savings and loan association is exempt from any license or occupation tax or fee for doing business in a city; and city ordinance, insofar as it attempts or purports to impose license fee upon such association is invalid and prohibited.** *City of Griffin v. First Fed. Sav. & Loan Ass'n*, 80 Ga. App. 217, 55 S.E.2d 771 (1949). But see *City of Atlanta v. First Fed. Sav. & Loan Ass'n*, 209 Ga. 517, 74 S.E.2d 243 (1953).

**Exemption from taxation is not exemption from license or occupation fees.** — To properly construe meaning of the word fran-

chise, it must be considered in connection with the other property for which an exemption from taxation was given. Franchises are property and former Code 1933, § 92-2302 (see O.C.G.A. § 48-5-421) made provision for taxation of franchises. When the word franchise is considered in connection with other items exempted from taxation, it must be taken as meaning powers conferred by a sovereignty, and that exemption granted is from taxation of property right in powers so conferred, and not exemption from license or occupation fee required by municipality in order to do business. *City of Atlanta v. First Fed. Sav. & Loan Ass'n*, 209 Ga. 517, 74 S.E.2d 243 (1953).

### 7-1-787. Exemption from securities regulations.

The opening and transfer of deposits in a building and loan association or savings and loan association are exempted from all provisions of law of this state which provide for the supervision and the regulation of the sale of securities, even if the word "shares" or similar terminology is used in connection therewith; and the sale of any such deposits shall be legal without any action or approval whatsoever on the part of any official authorized to license, regulate, and supervise the sale of securities. (Ga. L. 1937-38, Ex. Sess., p. 307, § 14; Code 1933, § 41A-3518, enacted by Ga. L. 1974, p. 705, § 1.)

**Cross references.** — Exemption from securities-registration requirements of securities issued by, federal savings and loan

associations, building and loan associations, § 10-5-8.

### RESEARCH REFERENCES

**ALR.** — Purchase or retirement of stock by building and loan association at a price less than its withdrawal value, 134 ALR 1212.

### 7-1-788. Notaries and other officers not disqualified by interest in association; validation of prior instruments.

No notary public or other public officer shall be disqualified from taking the acknowledgment of or witnessing any instrument, in writing, in which a building and loan association or a savings and loan association is interested, by reason of his holding an office in or being a member of or being



pecuniarily interested in or employed by such association so interested; and any such acknowledgments or attestations taken prior to April 1, 1975, are validated. (Ga. L. 1937-38, Ex. Sess., p. 307, § 15; Code 1933, § 41A-3519, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-789. Minors' deposits, safe-deposit boxes, and third-party payment accounts; validity of releases.**

(a) A minor shall be allowed to have deposits in a building and loan association or savings and loan association in his own name, and the deposits made by the minor shall not be subject to the control of his parent, guardian, or trustee. A minor may have third-party payment accounts. A receipt or acquittance signed by such a minor depositor shall be a valid and sufficient release and discharge of such association for any payment of any deposit to such minor. In the transactions involving payments to third parties out of the minor's account, the payment of an order of the minor shall be a valid and sufficient release and discharge of the savings and loan association for any payment of such funds from the minor's account.

(b) Subsection (a) of this Code section shall continue to include, without limitation:

(1) Deposits in such associations by a minor with one or more adults or other minors, as party to and with the same effect as a multiple-party account under Article 8 of this chapter;

(2) The rental to a minor by said associations of a safe-deposit box or other receptacle for the safe deposit of property from such minor (and the receipt of any such property), individually or jointly with one or more adults; and

(3) The dealing with a minor by said associations with respect to such a deposit account, third-party payment account, or safe-deposit agreement without the consent of a parent or guardian and with the same effect as though the minor were an adult.

Any action of the minor with respect to such deposit account, third-party payment account, or safe-deposit agreement shall be binding on the minor with the same effect as though the minor were an adult. (Ga. L. 1937-38, Ex. Sess., p. 307, § 16; Code 1933, § 41A-3520, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 17; Ga. L. 1982, p. 1085, §§ 1, 2.)

**7-1-790. Deposits of fiduciaries.**

A building and loan association or a savings and loan association may receive deposits in the name of an administrator, executor, guardian, trustee, or other fiduciary in trust for a named or an unnamed beneficiary or beneficiaries. Such a deposit and dividends or interest thereon or other

rights relating thereto may be paid or delivered, in whole or in part, to such fiduciary or may be exercised by such fiduciary without regard to any notice to the contrary so long as such fiduciary is living and until the association has received notice of the death of such fiduciary. The payment or delivery to any such fiduciary or a receipt or acquittance signed by any such fiduciary, to whom any such payment or any such delivery of rights is made, shall be a valid and sufficient release and discharge of such association for the payment or delivery so made. (Ga. L. 1937-38, Ex. Sess., p. 307, § 16; Code 1933, § 41A-3522, enacted by Ga. L. 1974, p. 705, § 1.)

### JUDICIAL DECISIONS

**Legislative intent.** — See *Bank S. v. Grand Lodge of Free & Accepted Masons*, 174 Ga. App. 777, 331 S.E.2d 629 (1985).

**Applicability to banks.** — In an action by children against a bank for accepting custodial certificates of deposit as collateral for their custodian's personal loan, the provision of this section creating a presumption that a fiduciary was acting in a lawful manner consistent with fiduciary's duties applied to shield the bank from liability. *Grogan v. Lanier Bank & Trust Co.*, 219 Ga. App. 313, 464 S.E.2d 892 (1995).

**Bank challenge of trustee's withdrawals.** — A bank is under no duty to challenge a trustee's withdrawal of trust funds merely because the amount withdrawn is large or for cash. *Bank S. v. Grand Lodge of Free & Accepted Masons*, 174 Ga. App. 777, 331 S.E.2d 629 (1985).

**Summary judgment in suit for mishandling trust.** — Although there was a genuine issue of fact whether a savings and loan association had knowledge of the court order requiring court permission before encroaching upon the corpus of a trust, it was not a material fact because, even if the association had such knowledge, it was permitted by O.C.G.A. § 7-1-790 to pay out the funds on the order of the trustee under the presumption that the trustee was acting in compliance with duties as a fiduciary; therefore, summary judgment was properly granted in favor of the association in the beneficiaries' suit for mishandling of the trust. *Chelena v. Georgia Fed. Sav. & Loan Ass'n*, 256 Ga. 336, 349 S.E.2d 180 (1986).

### RESEARCH REFERENCES

**ALR.** — Liability of bank where funds deposited in account of trustee, agent, or other fiduciary, as such, are transferred to his personal account and misappropriated, 145 ALR 445.

### 7-1-791. Payment on death of depositor.

Except as provided in Article 8 of this chapter, upon the death of a depositor of a building and loan association or a savings and loan association, such association may pay the amount of his deposit or any portion thereof to an executor, administrator, or other fiduciary duly appointed and qualified pursuant to the last will and testament of the depositor or by any court of competent jurisdiction in this state or any other state. (Ga. L. 1937-38, Ex. Sess., p. 307, § 16; Ga. L. 1958, p. 620, § 1; Code 1933, § 41A-3523, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 43; Ga. L. 1976, p. 1388, § 6; Ga. L. 1983, p. 661, § 2.)

**Cross references.** — Payment of deposits of deceased depositors, § 7-1-239.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 23 Am. Jur. 2d, Descent and Distribution, § 29.

#### **7-1-792. Deposits applied to funeral expenses.**

Except as provided in Article 8 of this chapter, if no application for the deposit is made by any person named in Code Section 7-1-791 within 90 days from the death of a depositor, a building and loan association or a savings and loan association shall be authorized to apply not more than \$1,000.00 of the deposit of such deceased depositor in payment of the funeral expenses of such deceased depositor upon receipt of an itemized statement of such expenses and the affidavit of the undertaker conducting the funeral that said statement was true and correct and had not been paid. (Ga. L. 1937-38, Ex. Sess., p. 307, § 16; Code 1933, § 41A-3524, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 1388, § 7.)

#### **7-1-793. Investment of funds in insured deposits.**

Administrators, executors, guardians, trustees, and other fiduciaries of every kind and nature; insurance companies; charitable, educational, eleemosynary, and public corporations and organizations; municipalities and other public corporations and bodies; and public officials are authorized to invest funds held by them, without any order of any court, in deposits in building and loan associations or savings and loan associations which are insured under a federal deposit insurance program; and, to the extent of such insurance, such investments shall be deemed and held to be legal investments for such funds. (Ga. L. 1937-38, Ex. Sess., p. 322, § 1; Ga. L. 1951, p. 756, § 1; Ga. L. 1952, p. 305, § 2; Ga. L. 1964, p. 194, § 1; Code 1933, § 41A-3525, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1980, p. 972, § 8; Ga. L. 1993, p. 917, § 7.)

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the provisions, opinions under former Code 1933, § 16-437 are included in the annotations for this section.

**Former Code Section 53-13-54** (see

**O.C.G.A. § 53-12-280) provides legal investments which can be made by trustees.** 1971 Op. Att'y Gen. No. 71-20 (decided under former Code 1933, § 16-437).

#### **7-1-794. Deposits as security or in lieu of bond.**

Whenever, under the laws of this state or otherwise, a deposit of securities is required for any purpose, the deposits made legal investments by Code



Section 7-1-793 shall be acceptable as such security; and, whenever, under the law of this state or otherwise, a bond is required with security, such bond may be furnished and the deposits made legal investments by Code Section 7-1-793 in the amount of such bond shall be acceptable to secure said bond without other security. This Code section and Code Section 7-1-793 are supplemental to any and all other laws relating to and declaring what shall be legal investments for the persons, corporations, organizations, and officials referred to in these Code sections and the laws relating to the deposit of securities and the making and filing of bonds for any purpose. (Ga. L. 1937-38, Ex. Sess., p. 322, § 2; Ga. L. 1952, p. 305, § 3; Ga. L. 1964, p. 194, § 2; Code 1933, § 41A-3526, enacted by Ga. L. 1974, p. 705, § 1.)

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the provisions, opinions under former Ga. L. 1937-38, Ex. Sess., p. 322 are included in the annotations for this section.

**Former Code Section 53-13-54** (see

**O.C.G.A. § 53-12-280) provides legal investments which can be made by trustees.** 1971 Op. Att'y Gen. No. 71-20 (decided under Ga. L. 1937-38, Ex. Sess., p. 322).

### 7-1-795. Savings account books and certificates.

The original record of deposits in building and loan associations and savings and loan associations is the record on the books of the association, and the depositor shall be entitled to a savings account book or certificate which is a duplicate of such record. Those dealing with such savings account books and certificates shall be bound by the record on the books of the association. In the event of the loss or destruction of any such savings account book or certificate, any association may, upon receipt of an affidavit of such loss or destruction, issue a duplicate thereof and remain liable only to the holder or holders as shown on the records of the association. The only way an effective transfer or pledge may be accomplished so as to affect the rights of the association is by transfer on the books of the association in the case of transfer or written notice of a pledge entered on the books of the association and acknowledged in writing in the case of a pledge; and the association shall be protected in paying any part of a deposit to the holder thereof as shown on the books of the association unless it has received written notice of a pledge or transfer thereof. (Code 1933, § 16-439, enacted by Ga. L. 1952, p. 305, § 4; Code 1933, § 41A-3527, enacted by Ga. L. 1974, p. 705, § 1.)

### RESEARCH REFERENCES

**ALR.** — Right of member of savings and loan association to inspect books and records, 134 ALR 699.

**7-1-796. Insanity, incompetency, bankruptcy, or death of depositor.**

A building and loan association or a savings and loan association paying deposits to an insane or otherwise incompetent depositor or bankrupt depositor or acting upon the release and discharge or authorization of such depositor or acting upon the power of attorney of an insane, deceased, or bankrupt depositor in good faith and without actual knowledge of the insanity or other incompetency, bankruptcy, or death of such depositor shall be protected in so doing and may lawfully charge such payment to the depositor's account. (Code 1933, § 16-440, enacted by Ga. L. 1956, p. 628, § 1; Code 1933, § 41A-3528, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-797. Building and loan association deposit insurance requirements; public notices when deposits not properly insured.**

(a) Every building and loan association shall be required to obtain deposit insurance satisfactory to the department before it may conduct business and accept deposits, except that building and loan associations which have had their deposit insurance coverage withdrawn or canceled may, in the discretion of the department, continue to accept deposits, provided that, within six months after withdrawal or cancellation of insurance, such associations shall obtain deposit insurance written by an insurance company authorized to transact business in this state and acceptable to the department or by the Federal Deposit Insurance Corporation. The department may, in its discretion, for cause shown, extend the time limitation in which deposit insurance must be obtained.

(b) Deposit insurance required to be obtained in subsection (a) of this Code section need not be in excess of amounts insured by the Federal Deposit Insurance Corporation at the time the insurance is obtained; but, wherever the insurance coverage is, in the opinion of the department, less than amounts insured by the Federal Deposit Insurance Corporation, the building and loan association shall be required to post a sign in boldface print, in letters at least four inches high, at a conspicuous place near the entrance of such association, which states "Deposits Not Insured" or "Deposits Insured Up To (insert amount of deposit insurance)." Such wording shall also follow the name of the building and loan association wherever it is written or printed and shall be posted in writing which is easily legible in letters at least one inch high at each window or desk receiving deposits. (Code 1933, § 41A-3529, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1980, p. 972, § 9; Ga. L. 1993, p. 917, § 8.)

**Cross references.** — For similar provisions pertaining to bank deposit insurance requirements, § 7-1-244.

## ARTICLE 8

## MULTIPLE-PARTY ACCOUNTS

**Law reviews.** — For article discussing joint tenancy arrangements as a means of avoiding probate, see 6 Ga. L. Rev. 74 (1971). For article discussing Georgia commercial law in 1976 to 1977, see 29 Mercer L. Rev. 41 (1977). For article discussing developments in the law of wills, trusts and administration

of estates in Georgia in 1976 to 1977, see 29 Mercer L. Rev. 291 (1977). For article, "Joint Bank Accounts: A Different Form of Joint Tenancy," see 17 Ga. St. B.J. 184 (1981). For article, "Transfer-on-Death Securities Registration: A New Title Form," see 21 Ga. L. Rev. 789 (1987).

## JUDICIAL DECISIONS

**Deposits made in joint form for convenience only.** — When a deposit is made in joint form for convenience only and not for the purpose of making a gift to the other party, the party making the deposit may recover. The presumption of joint ownership

is a rebuttable one and where the joint account was created as a matter of convenience with no intention of conferring a beneficial interest upon the codepositor the presumption is rebutted. *Davidson v. Walsh*, 158 Ga. App. 845, 282 S.E.2d 366 (1981).

## RESEARCH REFERENCES

**ALR.** — Power of one party to joint bank account to terminate the interests of the other, 161 ALR 71.

Effect of incompetency of joint depositor upon status and ownership of bank account, 62 ALR2d 1091.

Liability of bank to joint depositor of savings account for amounts withdrawn by other joint depositor without presentation of passbook, 35 ALR4th 1094.

Liability of bank to joint depositor for removal of name from account at request of other joint depositor, 39 ALR4th 1112.

Nondrawing cosigner's liability for joint checking account overdraft, 48 ALR4th 1136.

Payable-on-death savings account or certificate of deposit as will, 50 ALR4th 272.

## 7-1-810. Definitions.

As used in this article, the term:

(1) "Account" means a contract of deposit of funds between a depositor and a financial institution and includes a checking account, savings account, certificate of deposit, share account, and other like arrangements.

(2) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

(3) "Financial institution" means a savings and loan association as defined in paragraph (31) of Code Section 7-1-4 or any financial institution as defined in paragraph (21) of Code Section 7-1-4.

(4) "Joint account" means an account payable on request to one or more of two or more parties, whether or not mention is made of any right of survivorship.



(5) "Multiple-party account" means any of the following types of account:

- (A) A joint account;
- (B) A P.O.D. account; or
- (C) A trust account.

It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes; accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, or charitable or civic organization; or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

(6) "Net contribution" of a party to a multiple-party account as of any given time means the sum of all deposits thereto made by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

(7) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, conservator, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another, whether or not a beneficiary is named; but it does not include any named beneficiary unless he has a present right of withdrawal.

(8) "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any setoff or reduction or other disposition of all or part of an account pursuant to a pledge.

(9) "Proof of death" includes a death certificate or official record which is prima-facie proof of death.

(10) "P.O.D. account" means an account payable on request to one person during his lifetime and on his death to one or more P.O.D. payees or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.

(11) "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

(12) "Request" means a proper request for withdrawal or a check or order for payment which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but, if the financial institution conditions withdrawal or payment on advance notice, for purposes of this article the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(13) "Sums on deposit" means the balance payable on a multiple-party account, including interest, dividends, and, in addition, any deposit life insurance proceeds added to the account by reason of the death of a party.

(14) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account; it is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account or a fiduciary account arising from a fiduciary relation such as attorney-client.

(15) "Withdrawal" includes payment to a third person pursuant to check or other directive of a party. (Code 1933, § 41A-3801, enacted by Ga. L. 1976, p. 1388, § 8.)

**Law reviews.** — For annual survey of wills, trusts, and administration, see 43 Mercer L. Rev. 457 (1991). For annual survey article on wills, trusts and administration of estates, see 50 Mercer L. Rev. 381 (1998). For survey article discussing developments in law of business associations for the period from

June 1, 1998 through May 31, 1999, see 51 Mercer L. Rev. 127 (1999). For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001). For article, "Wills, Trusts & Administration of Estates," see 53 Mercer L. Rev. 499 (2001).

## JUDICIAL DECISIONS

**Multiple-party account.** — Once payee produced her sister's and husband's death certificates and had them removed as joint tenants on the CD accounts, the accounts ceased to be multiple-party accounts subject to the strictures of O.C.G.A. § 7-1-814. *Lowe v. Barnett Bank*, 209 Ga. App. 112, 433 S.E.2d 294 (1993).

**Cited in** *Lastinger v. Johnson*, 148 Ga. App. 453, 251 S.E.2d 369 (1978); *White v.*

*Royal*, 150 Ga. App. 57, 256 S.E.2d 662 (1979); *Johnson v. Lastinger*, 152 Ga. App. 328, 262 S.E.2d 601 (1979); *Bank S. v. Harrell*, 181 Ga. App. 64, 351 S.E.2d 263 (1986); *Lamb v. Thalimer Enters., Inc.*, 193 Ga. App. 70, 386 S.E.2d 912 (1989); *Parker v. Peavey*, 198 Ga. App. 694, 403 S.E.2d 213 (1991); *South v. Bank of Am.*, 250 Ga. App. 747, 551 S.E.2d 55 (2001).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 670 et seq., 690 et seq. 22A Am. Jur. 2d, Death, §§ 366, 426, 427. 60 Am. Jur. 2d, Payment, § 1.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 286, 287. 32A C.J.S., Evidence, § 766. 70 C.J.S., Payment, § 2.

**7-1-811. Applicability of provisions as to beneficial ownership and protection of financial institutions.**

Code Sections 7-1-812 through 7-1-814, concerning beneficial ownership as between parties or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between those persons and their creditors and other successors and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. Code Sections 7-1-816 through 7-1-821 govern the liability of financial institutions which make payments pursuant thereto and their setoff rights. (Code 1933, § 41A-3802, enacted by Ga. L. 1976, p. 1388, § 8.)

## JUDICIAL DECISIONS

**Cited** in *Parker v. Kennon*, 242 Ga. App. 627, 530 S.E.2d 527 (2000).

## RESEARCH REFERENCES

**ALR.** — Right of one party to a joint bank account to follow money withdrawn by the other, 77 ALR 799.

Joint bank account as subject to attachment, garnishment, or execution by creditor of one joint depositor, 86 ALR5th 527.

**7-1-812. Ownership during lifetime.**

(a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(b) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees; if two or more parties are named as original payees, during their lifetimes the account belongs to them in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(c) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime; and, if two or more parties are named as trustee on the account, during their lifetimes the account belongs to them in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent. If there is an irrevocable trust, the



account belongs beneficially to the beneficiary. (Code 1933, § 41A-3803, enacted by Ga. L. 1976, p. 1388, § 8.)

**Cross references.** — Joint tenancy with survivorship generally, § 44-6-190.

**Law reviews.** — For article, "Wills, Trusts

& Administration of Estates," see 53 Mercer L. Rev. 499 (2001).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

##### General Consideration

**Editor's notes.** — In light of the similarity of the issues dealt with under the provisions, decisions under former Code 1933, § 13-2039 have been included in the annotations for this Code section.

**Use in determining breach of duty of financial institution.** — Although the provisions of O.C.G.A. §§ 7-1-812 through 7-1-814 do not apply in disputes involving financial institutions and their customers concerning whether a party can properly withdraw funds in compliance with the terms of the applicable account contract, these sections may be considered in determining whether there has been a breach of the duty owed by financial institutions to properly handle transactions for their customers. *Tucker Fed. Sav. & Loan Ass'n v. Rawlins*, 209 Ga. App. 649, 434 S.E.2d 94 (1993).

**Two parties having joint control of a account** does not make deposits therein a gift from one to the other where there was no relinquishment of dominion by original depositor such as would create a gift in presenti. *Georgia Sav. Bank & Trust Co. v. Sims*, 332 F. Supp. 1306 (N.D. Ga. 1971) (decided under former Code 1933, § 13-2039).

O.C.G.A. § 7-1-812 created a presumption

that a party funding a joint account did not intend to make a gift of the funds of the account during the funder's life, and that presumption was subject to rebuttal only by clear and convincing evidence of a contrary intent. *Caldwell v. Walraven*, 268 Ga. 444, 490 S.E.2d 384 (1997).

The trial court correctly ruled that proceeds from jointly held CDs cashed in by daughters belonged entirely to their mother, where the daughters admitted they made no contributions to the CDs, no evidence whatsoever was presented of any other intent, and all the parties to the original CDs were still living, including the mother. *Parker v. Kennon*, 242 Ga. App. 627, 530 S.E.2d 527 (2000).

**Social Security benefits retain character as such, remaining exempt from garnishment**, though deposited in joint account. *Anderson v. First Nat'l Bank*, 151 Ga. App. 573, 260 S.E.2d 501 (1979).

**Cited in** *Lamb v. Thalimer Enters., Inc.*, 193 Ga. App. 70, 386 S.E.2d 912 (1989); *Daniell v. Klein*, 206 Ga. App. 377, 425 S.E.2d 344 (1992); *Jordan v. Stephens*, 221 Ga. App. 8, 470 S.E.2d 733 (1996); *Bradshaw v. McNeill*, 228 Ga. App. 653, 492 S.E.2d 568 (1997); *Howard v. Estate of Howard*, 249 Ga. App. 287, 548 S.E.2d 48 (2001).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 671.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 286.

**ALR.** — Right of one party to a joint bank account to follow money withdrawn by the other, 77 ALR 799.

Power of one party to joint bank account to terminate the interests of the other, 161 ALR 71

Conflict of laws as to disposition of and relative rights to bank deposits in the names of more than one person, 25 ALR2d 1240.

**7-1-813. Rights of survivorship.**

(a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent, unless there is clear and convincing evidence of a different intention at the time the account is created. If there are two or more surviving parties, the respective ownership of each during his lifetime shall be in proportion to his previous ownership interests under Code Section 7-1-812, augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.

(b) If the account is a P.O.D. account, on death of the original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or to the P.O.D. payees in equal portions if surviving or to the survivor of them if one or more die before the original payee; if two or more P.O.D. payees survive, there is no right of survivorship in event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(c) If the account is a trust account, on the death of the trustee or the survivor of two or more trustees, any sums remaining on deposit belong to such person or persons named as beneficiaries who survive the death of the trustee or the survivor of two or more trustees, unless there is clear and convincing evidence of a contrary intent. If two or more beneficiaries survive:

(1) They receive equal portions of the sums contained in the trust account; and

(2) There is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.

(e) A right of survivorship arising from the express terms of the account or under this Code section, a beneficiary designation in a trust account, or a P.O.D. payee designation cannot be changed by will. (Code 1933, § 41A-3804, enacted by Ga. L. 1976, p. 1388, § 8.)

**Cross references.** — Joint tenancy with survivorship generally, § 44-6-190.

**Law reviews.** — For article, "Multiple Party Accounts: Georgia Law Compared with the Uniform Probate Code," see 8 Ga. L. Rev. 739 (1974). For article surveying Geor-

gia cases in the area of wills, trusts, and administration of estates from June 1977 through May 1978, see 30 Mercer L. Rev. 259 (1978). For article surveying legislative and judicial developments in Georgia's will, trusts, and estate laws, see 31 Mercer L. Rev.

281 (1979). For annual survey of law of wills, trusts, and administration of estates, see 38 Mercer L. Rev. 417 (1986). For annual survey of law of wills, trusts, and administration

of estates, see 44 Mercer L. Rev. 445 (1992). For annual survey article on commercial law, see 50 Mercer L. Rev. 193 (1998).

## JUDICIAL DECISIONS

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#### GENERAL CONSIDERATION

##### General Consideration

**Editor's notes.** — In light of the similarity of the issues dealt with under the sections, decisions under former Code 1933, § 13-2039 have been included in the annotations for this Code section.

**In order to constitute a "joint account"** for purposes of O.C.G.A. § 7-1-813, an arrangement must constitute a contract of deposit of funds between a depositor and a financial institution; a municipal bond is not a contract of deposit, but an evidence of indebtedness issued by a city or other corporate public body. *Urban v. Lemley*, 232 Ga. App. 259, 501 S.E.2d 529 (1998).

**Presumptions.** — Where savings certificates were issued jointly to a decedent and another party and where the certificates contain no language expressly creating a survivorship interest, one of two presumptions will be applied, depending on the date of issue of the certificates: (1) If the certificates were issued before the effective date of former Code 1933, § 41A-3804 (see O.C.G.A. § 7-1-813), July 1, 1976, the presumption is that there was no right of survivorship intended; or (2) if the certificates were issued after July 1, 1976, there is a presumption that a right of survivorship was intended unless there is clear and convincing evidence to the contrary. *Collins v. Collins*, 176 Ga. App. 79, 335 S.E.2d 307 (1985).

There exists a presumption that right of survivorship is intended by the issuance of joint certificates of deposit, absent clear and convincing evidence to the contrary. *Wynn v. Wynn*, 202 Ga. App. 679, 415 S.E.2d 287, cert. denied, 202 Ga. App. 907, 415 S.E.2d 287 (1992).

**Survivorship presumption rebutted.** — The presumption of survivorship in O.C.G.A. § 7-1-813 was effectively rebutted where there was testimony from a family

member that around the time decedent opened a certificate account with the money from decedent's sister's estate, decedent gave assurances that the money was "taken care of" and would eventually reach those it was intended to reach, as plaintiff would "do the right thing with it". *Hopkins v. Moore*, 207 Ga. App. 383, 427 S.E.2d 853 (1993).

Where as decedent had done with other assets, a decedent designated defendant as co-owner with decedent of subordinated debentures with right of survivorship, evidence was sufficient to show that decedent intended that the defendant should receive the gifts which resulted from defendant's transfer of their debentures and the sale of stock decedent owned individually. *Stewart v. Stewart*, 240 Ga. App. 573, 524 S.E.2d 267 (1999).

**Survivorship presumption not rebutted.** — In an action by the executor of a joint tenant's estate against the executor of the surviving joint tenant's estate, evidence presented by the former was not sufficient to overcome the presumption that funds in joint bank accounts belong to the survivor's estate. *Urban v. Lemley*, 232 Ga. App. 259, 501 S.E.2d 529 (1998).

**Sufficient evidence to overcome presumption.** — In an action to recover property of an estate, where the administrator presented evidence that the decedent intended to divide the decedent's estate among the decedent's children equally and did not intend for the decedent's two youngest sons to have the funds in the joint accounts at the decedent's death, and also presented evidence of undue influence in the creation of the accounts, there was some evidence to overcome the presumption arising from O.C.G.A. § 7-1-813, and a directed verdict was inappropriate. *Myers v. Myers*, 195 Ga. App. 529, 394 S.E.2d 374 (1990).

**Lack of intention to make gift of funds.** — Trial judge's determination that decedent's



**General Consideration** (Cont'd)

lack of intention to make a gift of the funds to decedent's daughter was established by clear and convincing evidence, thus, applying either O.C.G.A. § 7-1-813(a) or pre-existing law, the trial judge was authorized to declare that the funds belonged to the estate. *James v. Elder*, 186 Ga. App. 810, 368 S.E.2d 570 (1988).

Evidence showing that decedent's daughter had suggested putting another name on decedent's certificates of deposit "in case Mama got sick," provided clear and convincing support for the jury's determination that decedent had added the daughter's name to the certificates for convenience rather than to effect a gift of the funds to the daughter. *Turner v. Mikell*, 195 Ga. App. 766, 395 S.E.2d 20 (1990).

Since the decedent's expressed intent in establishing joint accounts was for the convenience of decedent's niece in writing checks, paying bills and expenses, and handling the decedent's affairs during decedent's illness, there was sufficient evidence to overcome the presumption that the niece, as surviving joint tenant, was entitled to the accounts. *Williamson v. Echols*, 205 Ga. App. 453, 422 S.E.2d 329 (1992).

**Intent held question for jury.** — Where a decedent had given a power of attorney to decedent's nephews, and created joint accounts with one of the nephews, while expressing a concern that someone have access to decedent's money should decedent become ill, but there was testimony that the decedent understood the effect of survivorship accounts, there existed a material issue regarding the decedents' intent, which created a jury question. *Godwin v. Johnson*, 197 Ga. App. 829, 399 S.E.2d 581 (1990).

**Simultaneous death of husband and wife.** — Where the husband and wife died simultaneously there is no evidence, either "clear and convincing" or otherwise, which would authorize a finding that the husband did not intend for the wife to have a right of survivorship as to the joint bank accounts.

*Trust Co. Bank v. Thornton*, 204 Ga. App. 903, 420 S.E.2d 817 (1992).

**Equitable division of property titled in name of surviving wife.** — Where the issue of the division of marital assets of a former husband and wife had not been resolved at the time of the husband's death, property acquired as a direct result of the labor and investments of the former husband during the course of the marriage was subject to equitable division in spite of the fact that it was titled in the former wife's name after the former husband's death as a matter of contract law. *White v. White*, 253 Ga. 267, 319 S.E.2d 447 (1984).

**Joint tenancy not terminated by tenant's incapacity.** — Joint tenancies in bank and stock investment accounts and in real property did not terminate as a matter of law when one of the joint tenants was declared incapacitated and a guardian was appointed for the incapacitated individual's person and property. A guardian, unlike a trustee, has no beneficial title in the ward's estate, but is merely a custodian or manager. *Moore v. Self*, 222 Ga. App. 71, 473 S.E.2d 507 (1996).

**Two parties having joint control of account does not make deposits therein a gift** from one to the other where there was no relinquishment of dominion by original depositor such as would create a gift in presenti. *Georgia Sav. Bank & Trust Co. v. Sims*, 332 F. Supp. 1306 (N.D. Ga. 1971) (decided under Code 1933, § 13-2039).

**Cited in** *Lastinger v. Johnson*, 148 Ga. App. 453, 251 S.E.2d 369 (1978); *White v. Royal*, 150 Ga. App. 57, 256 S.E.2d 662 (1979); *Nowlin v. Parker*, 183 Ga. App. 137, 358 S.E.2d 258 (1987); *Banks v. Todd*, 184 Ga. App. 681, 362 S.E.2d 410 (1987); *Parker v. Peavey*, 198 Ga. App. 694, 403 S.E.2d 213 (1991); *Daniell v. Clein*, 206 Ga. App. 377, 425 S.E.2d 344 (1992); *Lowe v. Barnett Bank*, 209 Ga. App. 112, 433 S.E.2d 294 (1993); *Jordan v. Stephens*, 221 Ga. App. 8, 470 S.E.2d 733 (1996); *Willig v. Shellnut*, 224 Ga. App. 530, 480 S.E.2d 924 (1997); *Nails v. Rebhan*, 246 Ga. App. 19, 538 S.E.2d 843 (2000); *Buice v. Buice*, 255 Ga. App. 699, 566 S.E.2d 421 (2002).

**OPINIONS OF THE ATTORNEY GENERAL**

**Editor's notes.** — In light of the similarity of the provisions, opinions under former Ga.

L. 1937-38, Ex. Sess., p. 307 are included in the annotations for this section.

**Disposition of joint account in federal institution when one party dies.** — Upon death of depositor in federal savings and loan association, another person whose

name was on the depositor's account is entitled absolutely to the deposit. 1958-59 Op. Att'y Gen. p. 19 (decided under Ga. L. 1937-38, Ex. Sess., p. 307).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 670 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 286.

**ALR.** — Gift or trust by deposit of funds belonging to depositor in bank account in

name of himself and another, 103 ALR 1123; 135 ALR 993; 149 ALR 879.

Conflict of laws as to disposition of and relative rights to bank deposits in the names of more than one person, 25 ALR2d 1240.

### 7-1-814. Changing terms of account.

The provisions of Code Section 7-1-813 as to rights of survivorship are determined by the form of the account at the death of a party. Once established, the terms of a multiple-party account can be changed only:

(1) By closing the account and reopening it under different terms; or

(2) By presentation to the financial institution of a modification agreement in a form satisfactory to the financial institution and signed by all parties with a present right of withdrawal. (Code 1933, § 41A-3805, enacted by Ga. L. 1976, p. 1388, § 8.)

**Law reviews.** — For article surveying Georgia cases in the area of wills, trusts, and administration of estates from June 1977

through May 1978, see 30 Mercer L. Rev. 259 (1978).

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**Duty of financial institution to change customer's account.** — Any financial institution which receives money from its customer in exchange for certificate(s) of deposit has a duty to issue and/or change the certificate in a manner that complies with the wishes of the customer, so long as the wishes of the customer are not contrary to any applicable law, and the financial institution may be liable to the customer or a third-party beneficiary for mishandling the transaction, including improperly advising the customer how the certificate should be established or changed to comply with the wishes of the customer. Tucker Fed. Sav. & Loan Ass'n v. Rawlins, 209 Ga. App. 649, 434 S.E.2d 94 (1993).

A financial institution's duty to establish or change a customer's account in a manner that is consistent with the customer's wishes and the applicable law does not derive solely

from O.C.G.A. § 7-1-814. Tucker Fed. Sav. & Loan Ass'n v. Rawlins, 209 Ga. App. 649, 434 S.E.2d 94 (1993).

**One party to account cannot unilaterally divest another party of right to draw on it.** — Once account of a wife is established as multiple-party account, her husband acquires right to draw on it and she cannot unilaterally divest him of that right by instructing a credit union to delete his name from it. Grady v. DeKalb County Teachers Fed. Credit Union, 152 Ga. App. 86, 262 S.E.2d 250 (1979).

**Compliance with statute required.** — The terms of a multiple-party account, including the designation of those parties who have the right of withdrawal, can be changed only by compliance with the requirements of O.C.G.A. § 7-1-814. Rawlins v. Campbell, 199 Ga. App. 472, 405 S.E.2d 111 (1991); Ralston v. Etowah Bank, 207 Ga. App. 775, 429

S.E.2d 102 (1993), overruled on other grounds, *Clearwater Constr. Co. v. McClung*, 261 Ga. App. 789, 584 S.E.2d 61 (2003).

**Removal of joint tenants.** — Once payee produced her sister's and husband's death certificates and had them removed as joint tenants on the CD accounts, the accounts ceased to be multiple-party accounts subject to the strictures of O.C.G.A. § 7-1-814. *Lowe v. Barnett Bank*, 209 Ga. App. 112, 433 S.E.2d 294 (1993).

**Punitive damages improperly imposed.** — Bank's action in violation of O.C.G.A. § 7-1-814 did not evidence the necessary

willful misconduct necessary for an award of punitive damages pursuant to O.C.G.A. § 51-12-5.1(b). *Ralston v. Etowah Bank*, 207 Ga. App. 775, 429 S.E.2d 102 (1993), overruled on other grounds, *Clearwater Constr. Co. v. McClung*, 261 Ga. App. 789, 584 S.E.2d 61 (2003).

**Cited in** *Parker v. Peavey*, 198 Ga. App. 694, 403 S.E.2d 213 (1991); *First Union Nat'l Bank v. Davies-Elliott, Inc.*, 215 Ga. App. 498, 452 S.E.2d 132 (1994); *Jordan v. Stephens*, 221 Ga. App. 8, 470 S.E.2d 733 (1996); *Parker v. Kennon*, 242 Ga. App. 627, 530 S.E.2d 527 (2000).

### 7-1-815. Survivorship transfers nontestamentary.

Any transfers resulting from the application of Code Section 7-1-813 are effective by reason of the account contracts involved in this article and are not to be considered as testamentary. (Code 1933, § 41A-3806, enacted by Ga. L. 1976, p. 1388, § 8.)

**Law reviews.** — For article, "Commercial Law," see 53 *Mercer L. Rev.* 153 (2001).

## JUDICIAL DECISIONS

**Summary judgment was not proper** where a question of fact remained as to whether the funds received by the surviving spouse passed to the survivor outside the estate and did not constitute an election to take under

the will and if the surviving spouse was therefore entitled to the statutory year's support. *Wynn v. Wynn*, 202 Ga. App. 679, 415 S.E.2d 287, cert. denied, 202 Ga. App. 907, 415 S.E.2d 287 (1992).

### 7-1-816. Financial institution protection — Multiple-party accounts authorized; payment on signature of one party; inquiry as to deposits or withdrawals not required.

Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Any multiple-party account may be paid, on request, to any one or more of the parties. For purposes of establishing net contributions, a financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account or to inquire as to the proposed application of any sum withdrawn from an account. (Code 1933, § 41A-3807, enacted by Ga. L. 1976, p. 1388, § 8.)

**Law reviews.** — For article, "Business Associations," see 53 *Mercer L. Rev.* 109 (2001). For article, "Wills, Trusts & Admin-

istration of Estates," see 53 *Mercer L. Rev.* 499 (2001).



## JUDICIAL DECISIONS

## ANALYSIS

## GENERAL CONSIDERATION

## General Consideration

**Editor's notes.** — In light of the similarity of the issues dealt with by the provisions, decisions under Ga. L. 1919, p. 135, and former Code 1933, § 13-2039 have been included in the annotations for this Code section.

**Where O.C.G.A. § 7-1-816 applies,** there is no basis for a breach of contract claim. *South v. Bank of Am.*, 250 Ga. App. 747, 551 S.E.2d 55 (2001).

**Section does not affect right to property as between parties to account.** — Former Code 1933, § 13-2039 included reference only to liability of bank as to such deposit and did not affect right to property as between parties. *Georgia Sav. Bank & Trust Co. v. Sims*, 332 F. Supp. 1306 (N.D. Ga. 1971) (decided under former Code 1933, § 13-2039).

**Effect of section upon title to deposits.** — Ga. L. 1919, p. 135 had reference to liability of bank as to joint deposit, making it lawful for bank to pay either party under such circumstances. It did not affect right of property as between parties; that was, between depositor and third person claiming deposit. It had no applicability to title to money as between depositor and third party. *Clark v. Bridges*, 163 Ga. 542, 136 S.E. 444 (1927) (decided under Ga. L. 1919, p. 135).

**Caption of O.C.G.A. § 7-1-816,** which refers to "payment on signature of one party," does not create a requirement that banks obtain the signature of at least one party to the account. *South v. Bank of Am.*, 250 Ga. App. 747, 551 S.E.2d 55 (2001).

**Payment on proper request not established.** — Trial court erred in determining that a bank complied with O.C.G.A. § 7-1-816 because, despite the fact that CD proceeds were paid to a person who had a lawful interest in the funds, a jury could find that a joint owner of the account suffered financial harm as a result of the funds being

disbursed. *South v. Bank of Am.*, 250 Ga. App. 747, 551 S.E.2d 55 (2001).

**Payment on proper request established.** — In an action filed by a bank customer's son after the bank paid the proceeds of a certificate of deposit (CD) which the customer purchased in the customer's name and the son's name to the customer, alleging violations of the son's rights in the CD, the appellate court held that the bank was protected from liability by O.C.G.A. §§ 7-1-816 and 7-1-820 because the customer's telephone request for redemption was made in accordance with conditions of the customer's account and the bank's regulations, and the appellate court affirmed the trial court's judgment granting summary judgment for the bank. *South v. Bank of Am.*, 260 Ga. App. 91, 579 S.E.2d 80 (2003).

**Title upon death of depositors.** — Where husband deposited in bank a sum of money belonging to himself, in name of his wife but with understanding that all or any part thereof might be withdrawn either by himself or by the wife, but by no one else, thus reserving to himself a free right of withdrawal, but giving to the wife the same right, the effect was to make a joint deposit with the conditions stated attached thereto. Had money been thus withdrawn by the wife or by the husband, the bank, under such conditions would in such disbursement have been protected against suit by a legal representative of the other; but where deposit remained intact and nothing was withdrawn by either the husband or wife, both of whom subsequently died, title to such moneys vested jointly in estates of husband and wife. *First Nat'l Bank v. Sanders*, 31 Ga. App. 789, 122 S.E. 341 (1924).

**Cited in** *Williams v. Citizens Bank*, 182 Ga. App. 461, 356 S.E.2d 80 (1987); *Jordan v. Stephens*, 221 Ga. App. 8, 470 S.E.2d 733 (1996); *Emmett v. Regions Bank*, 238 Ga. App. 455, 518 S.E.2d 472 (1999).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 670 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 286.

### 7-1-817. Financial institution protection — Payment from joint account after death or disability.

Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded; but payment may not be made to the personal representative or heirs of a deceased party unless proof of death is presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under Code Section 7-1-813. (Code 1933, § 41A-3808, enacted by Ga. L. 1976, p. 1388, § 8.)

**Law reviews.** — For article discussing nonjudicial settlement of decedent's estate, see 6 Ga. L. Rev. 74 (1971).

### JUDICIAL DECISIONS

**Cited in** *Lastinger v. Johnson*, 148 Ga. App. 453, 251 S.E.2d 369 (1978); *White v. Royal*, 150 Ga. App. 57, 256 S.E.2d 662 (1979); *Parker v. Peavey*, 198 Ga. App. 694, 403 S.E.2d 213 (1991).

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the provisions, opinions under former Code 1933, § 13-2039 are included in the annotations for this section.

**Effect of section.** — Although former Code 1933, § 13-2039 (see O.C.G.A. § 7-1-817) does not give right of survivorship between two parties to bank account, it protects bank which makes payment of account to survivor. 1958-59 Op. Att'y Gen. p. 16 (decided under former Code 1933, § 13-2039).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 670 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 282.

**ALR.** — Conflict of laws as to disposition of and relative rights to bank deposits in the names of more than one person, 25 ALR2d 1240.

### 7-1-818. Financial institution protection — Payment of P.O.D. account.

Any P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that his or their decedent was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee. (Code 1933, § 41A-3809, enacted by Ga. L. 1976, p. 1388, § 8.)

RESEARCH REFERENCES

**ALR.** — Conflict of laws as to disposition of and relative rights to bank deposits in the names of more than one person, 25 ALR2d 1240.

**7-1-819. Financial institution protection — Payment of trust account.**

Any trust account may be paid, on request, to any trustee. Payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that his or their decedent was the survivor of all other persons named on the account either as trustee or beneficiary, unless:

(1) The financial institution, with respect to a trust account as to which there is only one trustee, has received written notice, in a form satisfactory to the financial institution, that the beneficiary has a vested interest not dependent upon his surviving the trustee; or

(2) The financial institution, with respect to a trust account as to which there is more than one trustee, has been provided with a copy of an agreement or resolution of all trustees, in a form satisfactory to the financial institution, to the effect that the beneficiary has a vested interest not dependent upon his surviving the trustees.

Payment may be made, on request, to a beneficiary or beneficiaries or the heirs or representative of a beneficiary or beneficiaries upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees. (Code 1933, § 41A-3810, enacted by Ga. L. 1976, p. 1388, § 8.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 691, 692, 695.

**7-1-820. Financial institution protection — Discharge upon proper payment; notice not to permit withdrawals.**

Payment made pursuant to Code Section 7-1-816, 7-1-817, 7-1-818, or 7-1-819 discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. (Code 1933, § 41A-3811, enacted by Ga. L. 1976, p. 1388, § 8.)



## JUDICIAL DECISIONS

**Payment on proper request established.** — In an action filed by a bank customer's son after the bank paid the proceeds of a certificate of deposit (CD) which the customer purchased in the customer's name and the son's name to the customer, alleging violations of the son's rights in the CD, the appellate court held that the bank was protected from liability by O.C.G.A. §§ 7-1-816 and 7-1-820 because the customer's telephone request for redemption was made in accordance with the conditions of the cus-

tomers account and the bank's regulations, and the appellate court affirmed the trial court's judgment granting summary judgment for the bank. *South v. Bank of Am.*, 260 Ga. App. 91, 579 S.E.2d 80 (2003).

**Cited in** *Callahan v. C. & S. Bank*, 150 Ga. App. 62, 256 S.E.2d 666 (1979); *Williams v. Citizens Bank*, 182 Ga. App. 461, 356 S.E.2d 80 (1987); *Echols v. Trust Co. Bank*, 198 Ga. App. 340, 401 S.E.2d 565 (1991); *South v. Bank of Am.*, 250 Ga. App. 747, 551 S.E.2d 55 (2001).

## 7-1-821. Financial institution protection — Right to setoff.

Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to setoff against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to setoff is that proportion to which the debtor is or was immediately before his death beneficially entitled and, in the absence of proof of net contributions, an equal share with all parties having present rights of withdrawal. (Code 1933, § 41A-3812, enacted by Ga. L. 1976, p. 1388, § 8.)

## JUDICIAL DECISIONS

**Right to setoff provided in O.C.G.A. § 7-1-821 is also subject to any contractual provision.** *Simpson v. Georgia State Bank*, 159 Ga. App. 310, 283 S.E.2d 278 (1981).

**Right to set-off shown.** — Even though the debtor was not beneficially entitled to any of

the funds, the financial institution had a right of set off under the contractual provisions. *Yates v. Trust Co. Bank*, 212 Ga. App. 438, 443 S.E.2d 293 (1994).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 865 et seq., 874 et seq.

**ALR.** — Bank's right to set off unmatured claims as against receiver, assignee for benefit of creditors, or trustee in bankruptcy, of insolvent depositor, 37 ALR2d 850.

Bank's right of setoff, based on debit of one depositor, against funds in account standing in names of debtor and another, 68 ALR3d 192.

## ARTICLE 9

## CRIMINAL AND RELATED PROVISIONS

**7-1-840. Institution of criminal prosecutions; assistance to state and federal law enforcement agencies; providing information to financial institutions considering employment of suspected person.**

(a) Upon discovery, by report or otherwise, of any apparent violation of any state or federal criminal law which is perpetrated through a deposit or loan account maintained at or which utilizes a monetary instrument issued by a financial institution located in this state or of any state or federal criminal law which relates to a financial institution, the department shall in its discretion either institute criminal proceedings in the manner provided by law or refer the matter to an appropriate law enforcement or prosecuting authority for further action. The department shall have the right to submit to the grand juries of the respective counties of the state any criminal violations of the laws of Georgia known by it to have occurred in such counties, or it may likewise submit to any United States attorney any criminal violations of the laws of Georgia which also constitute violations of the laws of the United States applicable to such financial institution. This provision shall not be so construed as to prevent the commissioner or other persons from proceeding in such cases by affidavit and warrant.

(b) The department may assist state and federal law enforcement agencies in further investigation of apparent violations of state or federal criminal statutes referred to in subsection (a) of this Code section.

(c) Without incurring civil liability or, in the case of the department, violating the provisions of Code Section 7-1-70, any financial institution that is the employer or former employer of a person or the department, whether in its regulatory capacity or as the employer or former employer of a person, may provide information to a financial institution which has employed or is considering employment of such person concerning the known or suspected involvement of such person in an apparent violation of a state or federal law or regulation which has been reported to the state or federal law enforcement or regulatory agency having jurisdiction of the violation unless the information is false and such employer, former employer, or the department knows that it is false and provides it with actual malice. For purposes of this Code section, the terms "financial institution" and "department" shall mean any duly elected or appointed official of such entities.

(d) If any board of directors, director, or officer of any financial institution is required by the department or the Federal Deposit Insurance Corporation or any other federal bank supervisory agency to provide any such regulatory agency or the fidelity bond carrier with any information regarding the appearance or suspicion of criminal activity involving any

director, officer, agent, employee, or customer of such financial institution, such board of directors, director, or officer shall not incur any civil liability for providing such information unless the information is false and such board of directors, director, or officer knows that it is false and provides it with actual malice. (Ga. L. 1919, p. 135, art. 20, § 37; Code 1933, § 13-9936; Code 1933, § 41A-9901, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1211, § 16; Ga. L. 1991, p. 1374, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 431 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 10-14.

#### 7-1-841. Applicability of Title 16.

(a) The following provisions of Title 16 are expressly made applicable to financial institutions, their directors, officers, agents, and employees and persons or corporations having dealings with, supervision over, or other contact with financial institutions:

- (1) Article 2 of Chapter 7 of Title 16, relating to damage to property;
- (2) Article 3 of Chapter 7 of Title 16, relating to arson and related offenses;
- (3) Article 1 of Chapter 7 of Title 16, relating to burglary and related offenses;
- (4) Chapter 9 of Title 16, relating to deceptive practices;
- (5) Chapter 8 of Title 16, relating to theft;
- (6) Article 2 of Chapter 8 of Title 16, relating to robbery;
- (7) Article 1 of Chapter 10 of Title 16, relating to abuse of government office; and
- (8) Article 4 of Chapter 10 of Title 16, relating to perjury and other falsifications.

(b) Nothing in subsection (a) of this Code section shall be construed to indicate that the designated chapters of Title 16 were not applicable to the enumerated financial institutions, persons, or corporations prior to April 1, 1975, or that other provisions of Title 16 are not, in appropriate circumstances, also applicable to the enumerated financial institutions, persons, or corporations. (Code 1933, § 41A-9902, enacted by Ga. L. 1974, p. 705, § 1.)

#### RESEARCH REFERENCES

**ALR.** — Criminal offense of making false statement or report as to assets or condition of bank, 85 ALR 824.



**7-1-842. Felonies of directors, officers, agents, and employees of financial institutions; aiding and abetting false entries.**

Any director, officer, agent, or employee of a financial institution who knowingly:

(1) Makes any false entry in any book, report, or statement of the financial institution or who omits or concurs in omitting to make any material entry in its books or accounts with intent in either case to injure or defraud the financial institution or any other company, firm, or person or to deceive any officer of the financial institution, the commissioner, or any examiner and every person who with like intent aids or abets any officer, director, clerk, agent, or employee in making any false entry, report, or statement or omitting to make any material entry on its books and accounts shall be guilty of a felony and, upon conviction, shall be punished by imprisonment and labor in the penitentiary for not less than one year nor more than ten years;

(2) While in charge of or employed in a financial institution, allows it to receive a deposit when he knows the financial institution to be insolvent shall be guilty of a felony and, upon conviction, shall be punished by imprisonment in the penitentiary for not less than one year nor more than ten years if loss or injury shall result to such depositor;

(3) By letterheads, newspaper advertisements, signs, circulars, or otherwise, represents the capital stock of any financial institution to be in excess of the capital actually paid in or who knowingly makes or concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement therein which is false or who knowingly omits or concurs in omitting any statement required by law or to be contained therein shall be guilty of a felony and, upon conviction, shall be punished by imprisonment and labor in the penitentiary for not less than one year nor more than five years;

(4) Violates or is involved in violating any provision of the charter or bylaws of said financial institution shall be guilty of a felony and, upon conviction, shall be punished by imprisonment and labor in the penitentiary for not less than one year nor more than five years;

(5) Uses information obtained through his association with the financial institution which he serves as a director, officer, agent, or employee, which is not otherwise publicly available, with the intent to realize personal gain or to cause financial harm to another party shall be guilty of a felony and, upon conviction, shall be punished by a fine not to exceed \$10,000.00 or twice the amount of improper gain realized, whichever is less, or by imprisonment and labor in the penitentiary for not less than one year nor more than five years, or both. (Ga. L. 1919, p.

135, art. 20, §§ 10, 12, 14, 28; Code 1933, §§ 13-9910, 13-9912, 13-9914, 13-9928; Code 1933, § 41A-9905, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1249, § 8.)

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the issues dealt with by the provisions, decisions under Ga. L. 1919, p. 212 are included in the annotations for this Code section.

**Ga. L. 1919, p. 135 (see O.C.G.A. § 7-1-842) being a penal statute, it must be strictly construed.** Johnson v. State, 166 Ga. 755, 144 S.E. 283 (1928).

**Unexplained false entries are sufficient to raise presumption of guilt** against officer making them. Holder v. Farmers Exch.

Bank, 28 Ga. App. 21, 110 S.E. 762 (1921) (decided under Ga. L. 1919, p. 212).

**Cashier who receives deposit knowing bank is insolvent commits a felony.** — Where cashier of insolvent bank, having charge and control of bank, and having knowledge of its insolvency, receives money on general deposit in bank, and thereby loss or injury results to person who made deposit, cashier is guilty of a felony. Lenhardt v. State, 37 Ga. App. 41, 138 S.E. 590 (1927).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 434, 444 et seq., 456 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 736-738, 740-745.

**ALR.** — What amounts to a deposit within statute in relation to civil or criminal liability

for accepting deposit when bank is unsafe or insolvent, 76 ALR 1320.

When bank deemed insolvent within meaning of criminal statute, 81 ALR 1160.

Criminal offense of making false statement or report as to assets or condition of bank, 85 ALR 824.

### 7-1-843. Certain misdemeanors of directors, officers, agents, and employees of financial institutions.

Any officer, director, agent, or employee of any financial institution who shall perform the following acts or deeds shall be guilty of a misdemeanor:

(1) Advertises by any office sign or upon any letterhead, billhead, bank note, receipt, certificate, or circular or on any written or printed paper that the deposits in said financial institution are insured or guaranteed, unless such deposits in said financial institution are, in fact, insured and guaranteed as required by Code Sections 7-1-244, 7-1-666, and 7-1-797 or regulation or action of the department pursuant thereto;

(2) Intentionally conceals from the directors of any financial institution or from the committee to whom the directors have delegated authority to pass on loans and discounts any discount or loan made for and in behalf of said financial institution or the purchase or sale of any evidence of indebtedness or agreement for the payment of money;

(3) Uses or applies any part of the capital or other funds of any financial institution to the purchase of shares of its own stock, unless such purchase shall be necessary to prevent loss upon a debt previously

contracted in good faith under Code Section 7-1-263 or is otherwise permitted by law;

(4) Concurs in any vote or act of the directors of such financial institution by which it is intended to declare a dividend or reduce or make a distribution of capital, except as authorized by Code Section 7-1-460 or 7-1-461 or otherwise under this chapter or other applicable law;

(5) Discounts or receives any evidence of indebtedness or agreement for the payment of money in payment of any subscription for common or preferred shares or with intent to enable any shareholder to withdraw any part of the money paid by him for shares held in the financial institution;

(6) Knowingly and willfully issues, participates in issuing, or concurs in any vote of the directors to issue any increase of its capital beyond the amount of the capital thereof duly authorized by or in pursuance of law or who knowingly or willfully sells or agrees to sell or who is interested, directly or indirectly, in the sale of any such shares of stock of such financial institution or in any agreement to sell the same;

(7) Certifies any check, draft, or order where the drawer of such check, draft, or order does not have on deposit with the financial institution at the time of such certification an amount of money equal to the amount specified in such check, draft, or order or fails to charge or set aside such amount from the deposit of the drawer immediately for the purpose of paying such certified check, draft, or order when presented;

(8) Makes or consents to the making of any conveyance, assignment, transfer, mortgage, or lien with intent to hinder, delay, or defraud creditors, after insolvency of the financial institution or in contemplation thereof, whether the same is made to an innocent purchaser or to any other person. (Ga. L. 1919, p. 135, art. 19, § 37; Ga. L. 1919, p. 135, art. 20, §§ 15, 16, 24, 25, 26, 27, 30; Ga. L. 1927, p. 195, § 14; Code 1933, §§ 13-2037, 13-9915, 13-9916, 13-9924, 13-9925, 13-9926, 13-9927, 13-9929; Code 1933, § 41A-9906, enacted by Ga. L. 1974, p. 705, § 1.)

**Cross references.** — Obligation of bank to certify check, § 11-3-411.

## JUDICIAL DECISIONS

**No defense in action for purchase price to cancel notes.** — It is no defense to action for purchase price to set up agreement of bank president to cancel notes in consideration of surrender of stock. *Knight v. Jeff Davis Bank-*

*ing Co.*, 31 Ga. App. 440, 120 S.E. 696 (1923).

**Cited in** *Commercial Bank v. Department of Banking & Fin.*, 244 Ga. 172, 259 S.E.2d 435 (1979).



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 431 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 734, 735.

**ALR.** — Validity and enforceability of agreement with bank officer or employee

individually in connection with bank accommodation, 41 ALR 349.

Criminal offense of making false statement or report as to assets or condition of bank, 85 ALR 824.

### 7-1-844. Other misdemeanors of directors, officers, agents, and employees of financial institutions.

Any director, officer, agent, or employee of a financial institution who shall willfully violate or participate in the violation of any of the following provisions of this chapter shall be guilty of a misdemeanor:

(1) Code Section 7-1-37, relating to restrictions on department officials and employees;

(2) Code Section 7-1-62, relating to accounting requirements to be followed by financial institutions;

(3) Code Section 7-1-285, relating to loan limits on banks;

(4) Code Section 7-1-291, relating to borrowing limits on banks;

(5) Code Section 7-1-311, relating to operations as a fiduciary by a trust company;

(6) Code Section 7-1-491, relating to limitations on financing to directors and officers of banks and trust companies;

(7) Code Section 7-1-492, relating to prohibitions applicable to directors, officers, employees, and attorneys of bank and trust companies in dealings with the institutions with which they are connected; or

(8) Code Section 7-1-658, relating to loan limits on credit unions. (Ga. L. 1919, p. 135, art. 20, §§ 6, 21, 22, 23, 31; Code 1933, §§ 13-9906, 13-9922, 13-9930; Ga. L. 1966, p. 692, § 51; Code 1933, § 41A-9907, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 45.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 431 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 734, 735.

**ALR.** — Construction and application of

criminal statutes relating to loans by bank to officers, directors, stockholders, or employees of bank or of banking department, 90 ALR 509.

**7-1-845. Miscellaneous felonies; when punished as misdemeanors.**

(a) Any person or corporation, including any financial institution or its directors, officers, agents, or employees, who shall perform the following acts or deeds shall be guilty of a felony:

(1) Publishes or causes to be published any false statement, expressed either by printing or writing or by signs, pictures, or the like, of or concerning any financial institution as to the assets or liabilities of said financial institution or as to its solvency or ability to meet its obligations or as to its soundness or who shall publish or cause to be published any other false statement so expressed, calculated to affect the credit or standing of said financial institution or to cast suspicion upon its solvency, soundness, or ability to meet its deposits or other obligations in due course;

(2) Falsely circulates any report or makes any false oral statement as to the assets or liabilities of a financial institution or as to its solvency or ability to meet its obligations or as to its soundness or who shall make any other false oral statement calculated to affect the credit or standing of said financial institution or to cast suspicion upon its solvency, soundness, or ability to meet its deposits or other obligations in due course;

(3) Willfully engages in the business of:

(A) A bank in violation of Code Section 7-1-241;

(B) A trust company in violation of Code Section 7-1-242;

(C) A credit union in violation of Code Section 7-1-633;

(D) Selling checks before receiving a license as required by Code Section 7-1-681;

(E) An international bank agency before receiving the license required by Code Section 7-1-713;

(F) A business development corporation before approval of the department is granted under Code Section 7-1-743;

(G) A building and loan association before its articles are approved; or

(H) Transacting business either directly or indirectly as a mortgage broker or mortgage lender unless licensed by the department or exempt from licensing pursuant to Code Section 7-1-1001; or

(4) Being an agent of a licensee or such agent's employee who is authorized to sell or issue checks on behalf of a licensee, issues checks directly or indirectly to or for his own benefit, or sells or issues checks without accepting funds therefor or sells or issues checks and willfully fails to remit to the licensee the proceeds from the sale or issuance of

such checks within five business days from the date of such sale or issuance.

(b) Upon conviction under this Code section such person or corporation shall be punished by imprisonment for not less than one nor more than five years or fined \$10,000.00; but, on the recommendation of the jury trying the case, when such recommendation is approved by the judge presiding on the trial, such crime shall be punished as a misdemeanor. If the judge trying the case deems it proper, he may, in fixing the punishment, reduce such felony to a misdemeanor. (Ga. L. 1919, p. 135, art. 20, §§ 8, 32, 33; Code 1933, §§ 13-9907, 13-9931, 13-9932; Ga. L. 1937-38, Ex. Sess., p. 307, §§ 17, 18; Ga. L. 1965, p. 81, § 18; Code 1933, § 41A-9908, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1978, p. 1717, § 10; Ga. L. 1983, p. 602, § 20; Ga. L. 1989, p. 1257, § 31; Ga. L. 1999, p. 674, § 29.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 431 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, §§ 734, 735.

**ALR.** — Criminal offense of making false statement or report as to assets or condition of bank, 85 ALR 824.

False representation by officers or directors of bank or building and loan association

that impairment of capital has been made good, as basis of action against them, 144 ALR 1498

Liability of bank, to other than party whose financial condition is misrepresented, for erroneous credit information furnished by bank or its directors, officers, or employees, 77 ALR3d 6.

#### 7-1-846. Punishment for misdemeanor violations.

Upon conviction of a misdemeanor as prescribed by the several provisions of this chapter, the offender shall be punished as prescribed by Code Section 17-10-3, as now or hereafter amended. (Ga. L. 1919, p. 135, art. 20, § 38; Code 1933, § 13-9937; Code 1933, § 41A-9910, enacted by Ga. L. 1974, p. 705, § 1.)

### ARTICLE 10

#### TRANSITION PROVISIONS; FEES OF SECRETARY OF STATE

#### 7-1-860. Application of chapter.

This chapter applies to transactions and events occurring on and after April 1, 1975. (Code 1933, § 41A-3701, enacted by Ga. L. 1974, p. 705, § 1.)

#### 7-1-861. Completion of pending transactions; continuation of existing charters, appointments, regulations, and fees.

(a) Transactions validly entered into before April 1, 1975, and the rights, duties, and interests flowing from them remain valid thereafter and may be



terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this chapter as though such repeal or amendment had not occurred.

(b) The validity of existing articles and charters shall not be impaired by this chapter. Appointments of officers in effect on April 1, 1975, shall continue in force until changed as permitted by this chapter or other applicable law. Regulations which have been issued by the department or the commissioner and fee schedules established by either of them or existing pursuant to statute shall remain in effect until changed pursuant to this chapter. (Code 1933, § 41A-3702, enacted by Ga. L. 1974, p. 705, § 1.)

**7-1-862. Fees to be paid to Secretary of State.**

The Secretary of State shall charge and collect fees with regard to filings by persons subject to the provisions of this chapter to the same extent as are charged and collected with regard to similar filings by corporations organized under Chapter 2 of Title 14, known as the “Georgia Business Corporation Code.” (Code 1933, § 41A-3703, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1983, p. 602, § 21; Ga. L. 1989, p. 1257, § 32.)

**Cross references.** — Fees to be paid to issuing certificates pertaining to Secretary of Secretary of State for filing documents and State corporations, § 14-4-183.

ARTICLE 11

RECORDS AND REPORTS OF CURRENCY TRANSACTIONS

**7-1-910. Purpose.**

It is the purpose of this article to require certain reports and records of transactions involving United States currency where such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. (Code 1981, § 7-1-910, enacted by Ga. L. 1982, p. 2219, § 1.)

JUDICIAL DECISIONS

**Applicability.** — O.C.G.A. § 7-1-910 was not applicable in an action alleging that a bank improperly cashed certificates of deposit and a savings account. *Emmett v. Regions Bank*, 238 Ga. App. 455, 518 S.E.2d 472 (1999).

**7-1-911. Definitions.**

As used in this article, the term:

- (1) “Commissioner” means the commissioner of banking and finance.

(2) "Conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.

(3) "Currency" means currency and coin of the United States.

(4) "Currency transaction" means a transaction:

(A) Initiated from the receipt or payment of currency or concluding with the receipt or payment of currency; or

(B) Involving the movement or transfer of monetary value by electronic means other than within the books of account of the same financial institution.

(5) "Department" means the Department of Banking and Finance of the State of Georgia.

(6) "Financial institution" means:

(A) A state or national bank;

(B) A trust company;

(C) A building and loan association, state savings and loan association, or a federal savings and loan association;

(D) A state or federal credit union;

(E) An international bank agency doing business in this state on April 1, 1975, pursuant to the former "International Bank Agency Act," approved April 6, 1972 (Ga. L. 1972, p. 1140), or authorized to do business in this state pursuant to Article 5 of this chapter; or

(F) A licensee under Article 4 or Article 4A of this chapter and such other persons as may be engaged in the business of:

(i) Cashing checks for a fee; or

(ii) Performing transactions by wire or other electronic means to facilitate the movement or transfer of money.

(7) "Knowing that the moneys involved in a currency transaction represent the proceeds of some form of unlawful activity" means that the person knew the moneys involved in the transaction represented proceeds from some form, although not necessarily which form, of activity that constitutes a felony under this Code.

(8) "Monetary instruments" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

(9) “Person” means natural persons, partnerships, trusts, estates, associations, corporations, and all entities cognizable as legal personalities.

(10) “Specified unlawful activity” means any act or activity constituting an offense punishable as a felony pursuant to the laws of this state or any act or acts constituting a pattern of racketeering activity as that term is defined in Code Section 16-14-3.

(11) “Transaction” includes:

(A) A purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition and, with respect to a financial institution, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected; or

(B) The movement of funds by wire or other means or involving one or more monetary instruments or the use of a financial institution. (Code 1981, § 7-1-911, enacted by Ga. L. 1982, p. 2219, § 1; Ga. L. 1986, p. 214, § 1; Ga. L. 1989, p. 1211, § 17; Ga. L. 1990, p. 362, § 2; Ga. L. 2004, p. 458, § 9.)

**The 2004 amendment**, effective July 1, 2004, inserted “or Article 4A” near the beginning of subparagraph (6)(F).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1989, deleted the comma following “disposition” and inserted commas preceding and following “with respect to a financial institution” in subparagraph (A) of paragraph (10) (now paragraph (11)).

**Editor’s notes.** — The “International Bank Agency Act” (Ga. L. 1972, p. 1140), referred to in subparagraph (6)(E), was repealed by Ga. L. 1974, p. 705, § 3.

**Law reviews.** — For note on 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 201 (1990).

## **7-1-912. Records and reports of certain currency transactions; regulations; commissioner’s authority under Code Section 7-1-64; prohibited acts; definitions.**

(a)(1) Financial institutions and other money service businesses are required by state law to comply with the filing, reporting, and record-keeping requirements provided for in federal law. The department may promulgate regulations that specify additional requirements for currency transaction reports, record keeping, and suspicious activity reports.

(2) Pursuant to federal law, a financial institution must keep a record of any currency transaction deemed suspicious for any reason, including transactions where money laundering is suspected, and file a report of such transaction with the appropriate federal authority. All such suspi-



cious activity reports shall be simultaneously filed with the department, unless by regulation the department deems a federal filing to be adequate.

(3) The provisions of paragraph (1) of this subsection shall not apply to transfers between banks, credit unions, or savings and loan associations chartered under the laws of any state or the United States which do not involve the payment or receipt of currency and which are accomplished through a wire or electronic transfer system operated by the Federal Reserve System, the Federal Home Loan Bank System, or other governmental agency or instrumentality; provided, however, with regard to each such transfer the bank, credit union, or savings and loan association shall maintain a record of the name, address, and tax identification number of its customer, the name and location of the corresponding bank, credit union, or savings and loan association, and the name of the customer of the corresponding bank, credit union, or savings and loan association.

(b) The commissioner shall prescribe such regulations as he may deem appropriate to carry out the purposes of this article. Such regulations shall to the extent feasible be consistent with federal regulations and may provide for exemption of such transactions as the commissioner determines are clearly of a legitimate nature for which mandatory reporting would serve no useful purpose. The regulations shall provide for adequate safeguards against unauthorized currency transactions or transactions otherwise inconsistent with this article.

(c) The commissioner in his discretion may exercise the authority granted in Code Section 7-1-64 to assure that financial institutions subject to this article are in compliance herewith.

(d) No person shall for the purpose of evading the reporting requirements of this Code section:

(1) Cause or attempt to cause a financial institution to fail to file a report required pursuant to this Code section;

(2) Cause or attempt to cause a financial institution to file a report required pursuant to this Code section that contains a material omission or misstatement of fact; or

(3) Structure or assist in structuring or attempt to structure or assist in structuring any currency transaction with one or more financial institutions.

(e) For purposes of this Code section, the term:

(1) "Material omission or misstatement" shall include the furnishing of a false or erroneous name, address, taxpayer identification number, and business, profession, or occupation for the person performing the currency transaction or the beneficiary of such transaction or displaying

or otherwise producing physical proof of identity on such persons which is forged, falsified, or otherwise altered; and

(2) “Structuring” of a currency transaction means the division of a transaction which would otherwise be reportable under this Code section into two or more transactions which if considered separately would not be reportable. (Code 1981, § 7-1-912, enacted by Ga. L. 1982, p. 2219, § 1; Ga. L. 1986, p. 214, § 2; Ga. L. 1989, p. 1211, § 18; Ga. L. 1990, p. 362, § 3; Ga. L. 1993, p. 917, § 9; Ga. L. 1994, p. 1780, § 6; Ga. L. 1996, p. 848, § 12; Ga. L. 1997, p. 485, § 28; Ga. L. 2004, p. 458, § 10.)

**The 2004 amendment**, effective July 1, 2004, in paragraph (a)(1), substituted the present first sentence for the former first sentence which read: “Every financial institution shall keep a record of currency transactions in excess of \$10,000.00 and shall comply with federal law as to their filing.”, and inserted “, record keeping,” near the end of the second sentence.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1997, a comma was inserted following “federal law” in the first sentence of paragraph (a)(2).

**Law reviews.** — For note on 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 201 (1990).

### **7-1-913. Access to reports.**

The Georgia Bureau of Investigation and the Department of Revenue shall have access to and shall be authorized to inspect and copy any reports filed with the department pursuant to this article. In addition, unless prohibited by federal law or by any agreements with federal authorities, the Georgia Bureau of Investigation and the Department of Revenue shall have access to and shall be authorized to inspect and copy any currency transaction report information received by the department from federal authorities. (Code 1981, § 7-1-913, enacted by Ga. L. 1982, p. 2219, § 1; Ga. L. 1994, p. 1780, § 7.)

### **7-1-914. Civil penalties; action for recovery; penalty.**

(a) For each willful violation of this article, the commissioner may assess upon any financial institution and upon any director, officer, or employee thereof who willfully participates in the violation a civil penalty not exceeding \$1,000.00.

(b) In the event of the failure of any person to pay any penalty assessed under this Code section, a civil action for recovery thereof may, in the discretion of the commissioner, be brought in the name of the State of Georgia.

(c) Whoever conducts or attempts to conduct a transaction described in subsection (c) of Code Section 7-1-915 is liable to the State of Georgia for a civil penalty of not more than the amount of the funds involved in the transaction or \$10,000.00, whichever is greater. (Code 1981, § 7-1-914, enacted by Ga. L. 1982, p. 2219, § 1; Ga. L. 1989, p. 1211, § 19.)

**7-1-915. Criminal penalties; penalties imposed by other Code sections not superseded.**

(a) Except as provided in subsection (b) of this Code section, whoever willfully violates any provision of this article shall be guilty of a misdemeanor.

(b) Whoever willfully violates any provision of this article where the violation is:

(1) Committed in furtherance of the commission of any other violation of Georgia law; or

(2) Committed as part of a pattern of illegal activity involving transactions exceeding \$100,000.00 in any 12 month period

shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than \$500,000.00 or by imprisonment for not more than five years, or both.

(c) Whoever, knowing that the moneys involved in a currency transaction represent the proceeds of some form of unlawful activity, conducts or attempts to conduct such a transaction which in fact involves the proceeds of specified unlawful activity:

(1) With the intent to promote the carrying on of specified unlawful activity; or

(2) Knowing that the transaction is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or to avoid a transaction reporting requirement under this article

shall be sentenced to a fine of not more than \$500,000.00 or twice the amount involved in the transaction, whichever is greater, or imprisonment for not more than 20 years, or both.

(d) Nothing in subsection (c) of this Code section nor in subsection (c) of Code Section 7-1-914 shall supersede any provision of law imposing criminal or civil penalties or affording civil remedies in addition to those provided for in this Code section or in Code Section 7-1-914. (Code 1981, § 7-1-915, enacted by Ga. L. 1982, p. 2219, § 1; Ga. L. 1983, p. 3, § 5; Ga. L. 1989, p. 1211, § 20.)

**7-1-916. Forfeiture of property involved in illegal transactions.**

All property of every kind used or intended for use in the course of, derived from, or realized through a transaction which in fact involves the proceeds of unlawful activity specified in Chapter 14 of Title 16 or otherwise subject to the provisions of this article shall be subject to forfeiture to the



state. Forfeiture shall be had by the same procedure as is set forth in Code Section 16-14-7. (Code 1981, § 7-1-916, enacted by Ga. L. 1989, p. 1211, § 21.)

#### RESEARCH REFERENCES

**ALR.** — Forfeiture of homestead based on criminal activity conducted on premises—state cases, 16 ALR5th 855.

### ARTICLE 12

#### SMALL MINORITY BUSINESS DEVELOPMENT CORPORATIONS

##### 7-1-940. Definitions.

As used in this article, the term:

(1) “Board of directors” means any board of directors of a corporation created under this article.

(2) “Corporation” means a Georgia small minority business development corporation created under this article;

(3) “Lending institution” means any bank or trust company, building and loan association, savings and loan association, insurance company or related corporation, partnership, foundation, pension fund, or other institution engaged primarily in lending or investing funds.

(4) “Loan limit” means, for any member, the maximum amount permitted to be outstanding at any one time on member loans made by such member to the corporation, as determined under this article.

(5) “Member” means any lending institution authorized to do business in this state which shall undertake to make member loans to a corporation created under this article, upon its call, and in accordance with this article.

(6) “Member loan” means a loan made by a member upon the call of the corporation pursuant to Code Section 7-1-947.

(7) “Minority person” means a lawful permanent resident of the United States who is:

- (A) Black;
- (B) Hispanic;
- (C) Asian-Pacific American;
- (D) Native American; or
- (E) Asian-Indian American.

(8) "Small minority business" means any for profit corporation, partnership, proprietorship, association, or other business entity which:

(A) Is at least 51 percent owned and controlled by minority persons and whose management and daily operation are controlled by one or more of the minority persons who own it;

(B) Has gross revenue of less than \$6 million in a 12 month fiscal year;

(C) Has a net profit after taxes for each of the last two taxable years of less than \$1 million;

(D) Employs less than 500 people; and

(E) Is not a lending institution. (Code 1981, § 7-1-940, enacted by Ga. L. 1988, p. 804, § 1.)

**7-1-941. Creation of corporations; contents of articles of incorporation; subscription and acknowledgment.**

(a) Five or more persons competent to contract, a majority of whom shall be residents of this state, who may desire to create a small minority business development corporation under this article, for the purpose of promoting, developing, and advancing small minority business and, to that end, to exercise the powers and privileges provided in this article, may be incorporated by presenting articles to the Secretary of State, as provided in this Code section and Code Section 7-1-942. The articles shall contain:

(1) The name of the corporation, which shall include the words "Small Minority Business Development Corporation of Georgia," and a recitation that the corporation is organized under this article;

(2) The location of its initial registered office, but such corporation may have branch offices in such other places within the state as may be fixed by the board of directors;

(3) The purposes for which the corporation is founded, which shall include: to promote, stimulate, develop, and advance small minority business and thereby promote, stimulate, develop, and advance the business prosperity and economic welfare of the State of Georgia; to encourage and assist, through loans, investments, or other business transactions, in the location of the small minority business and industry in this state and to rehabilitate and assist existing small minority business and industry; to stimulate and assist in the expansion of all kinds of small minority business activity which will tend to promote the small minority business development and maintain the economic stability of this state; to provide maximum opportunities for minority employment, encourage thrift, and improve the standard of living of minorities and other citizens of this state; similarly to cooperate and act in conjunction with other

organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational small minority business developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of small minority business activity in this state;

(4) The names and post office addresses of the members of the first board of directors, who, unless otherwise provided by the articles or the bylaws, shall hold office for the first year of existence of the corporation or until their successors are elected and have qualified;

(5) Any provisions which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, dividing, limiting, and regulating the powers of the corporation, the directors, shareholders, or any class of the shareholders, including, but not limited to, a list of the officers, and provisions governing the issuance of stock certificates to replace lost or destroyed certificates, provided that no provision shall be contained for cumulative voting for directors; and

(6) The amount and number of authorized shares, the par value of each share, and the minimum amount of capital with which it shall do business and, if there is more than one class of stock, a description of the different classes. The minimum amount of capital with which the corporation shall commence business shall not be less than \$50,000.00.

The articles may also contain any provisions consistent with the laws of this state for the regulation of the affairs of the corporation.

(b) The articles shall be in writing, subscribed by the incorporators, and acknowledged by each of them before an officer authorized to take acknowledgments. A copy of the articles so subscribed and acknowledged shall be filed with the department for approval. (Code 1981, § 7-1-941, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 1990, p. 176, § 1.)

#### **7-1-942. Approval of articles by department.**

Whenever the articles shall have been filed in the office of the Secretary of State and approved by the department and all filing fees and taxes prescribed by law have been paid, said entity shall constitute a corporation. Said corporation shall not be authorized to commence business until its articles are approved by the department. Upon such approval by the department, authorized stock of the corporation may thereafter be issued. (Code 1981, § 7-1-942, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 1989, p. 1257, § 33; Ga. L. 1990, p. 176, § 2.)

#### **7-1-943. Standards for approval of articles by department; timing.**

(a) Upon receipt of an application for approval of articles from a corporation organized pursuant to this article, the department shall



exercise its discretion in its consideration of the application; but the department shall not approve the application until it has ascertained to its satisfaction:

(1) That the public need and advantage will be promoted by the establishment of the corporation;

(2) That conditions in the locality in which the corporation will transact business afford reasonable promise of a successful operation;

(3) That the applicants may legally invest in the stock of the corporation and that such investment would not be to the detriment of the applicants; and

(4) That the proposed officers and directors have sufficient experience, ability, and standing to afford reasonable promise of a successful operation.

(b) Within 90 days after receipt of an application for approval of the articles, the department shall issue a certificate either granting or denying permission for the corporation to commence business, provided that in no instance shall the department grant such permission until it has ascertained to its satisfaction that the above conditions and circumstances have been met and that the articles are in accordance with this article. (Code 1981, § 7-1-943, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 1990, p. 176, § 3.)

#### **7-1-944. Filing departmental approval with Secretary of State.**

Upon receiving the approval of the department, the incorporators shall file the same together with the fee specified by Code Section 7-1-862 with the Secretary of State. (Code 1981, § 7-1-944, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 1989, p. 946, § 73; Ga. L. 1989, p. 1257, § 34.)

#### **7-1-945. Corporate powers.**

In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations by the laws of this state, the corporation shall, subject to the restrictions and limitations contained in this Code section, have the following powers:

(1) To elect, appoint, and employ officers, agents, and employees;

(2) To make contracts and incur liabilities for any of the purposes of the corporation, provided that the corporation shall not incur any secondary liability by way of the guaranty or endorsement of the obligations of any person or corporation or in any other manner;

(3) To borrow money and to do all things necessary or desirable to secure aid, assistance, loans, and other financing from its members (whether as member loans or otherwise), from any lending institution, or

from any agency established under federal or state law for any of the purposes of the corporation and to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchise, rights, and privileges of every kind and nature or any part thereof or interest therein without securing shareholder or member approval;

(4) To make loans to any small minority business and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and services connected therewith; provided, however, that the corporation shall not approve any application for a loan unless and until the small minority business applying for said loan shall show that such business has applied for the loan through ordinary lending channels and that the loan has been refused by at least two lending institutions that would be qualified by law to make such a loan, it not being the intention of this article to take from any lending institution any such loans or commitments as may be desired by such organizations generally in the ordinary course of their business;

(5) To purchase, receive, hold, lease, or otherwise acquire and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

(6) To acquire the good will, business rights, real and personal property, and other assets or any part thereof or interest therein of any small minority business and to assume, undertake, or pay the obligations, debts, and liabilities of any such small minority business; to acquire improved or unimproved real estate for the purpose of constructing small minority business establishments thereon or for the purposes of disposing of such real estate to others for the construction of small minority business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of small minority business establishments;

(7) To acquire, subscribe for, own, sell, hold, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in or indebtedness of any small minority business and, while the owner or holder thereof, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;

(8) To mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in paragraph (5), (6), or (7) of this Code section, as security for the payment of any part of the purchase price therefor;

(9) To cooperate with and avail itself of the facilities of the United States Department of Commerce, the Department of Economic Development, and any other similar state or federal governmental agencies and to cooperate with and assist and otherwise encourage organizations in the various communities of this state in the promotion, assistance, and development of small minority business and the economic well-being of such communities or of this state or any political subdivision thereof;

(10) To redeem or otherwise reacquire its shares under the circumstances and subject to the restrictions now or hereafter set forth for business corporations by the laws of this state;

(11) To make, amend, and repeal bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation, which bylaws may establish internal governance procedures and standards, including, but not limited to, procedures for voting by proxy at and for giving notice of meetings of directors and of shareholders and members and the delegation by the board of directors of its authority under the articles of incorporation and this article to one or more committees of the board or to officers of the corporation, and which bylaws may give the board of directors or committees thereof the power to pass resolutions necessary or convenient to carry out the purposes of the corporation;

(12) To contract with the Small Business Development Centers of the University System of Georgia and economic development centers of other colleges and universities, which centers shall also be authorized to contract with the corporation, for the performance of loan application and packaging functions, market studies, and such other activities necessary or convenient to carry out the purposes of the corporation;

(13) To provide technical assistance for both public and private sources of contract opportunities for small minority businesses;

(14) To provide equity funding as authorized for Minority Enterprise Small Business Investment Corporations through the federal Small Business Administration;

(15) To provide for import and export financing for small minority businesses; and

(16) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article. (Code 1981, § 7-1-945, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 1989, p. 1641, § 3; Ga. L. 2004, p. 690, § 2.)

**The 2004 amendment**, effective July 1, 2004, substituted "Department of Economic Development" for "Department of Industry,

Trade, and Tourism" near the beginning of paragraph (9).

**Editor's notes.** — Ga. L. 1989, p. 1641,



§ 18, not codified by the General Assembly, provides that: "In the event of any substantive conflict between this Act and any other Act of the 1989 General Assembly, such other Act shall control over this Act."

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1988, "business" was substituted for "businesses" following "any small minority" near the beginning of paragraph (6).

**7-1-946. Bond and stock holding authority; member loans to corporation not discriminatory.**

Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) Any person, including all domestic corporations organized for the purpose of carrying on business within this state and further including, without implied limitation, public utility companies and insurance companies and foreign corporations licensed to do business within this state and all lending institutions as defined in Code Section 7-1-940 and all trusts are authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by or the shares of the corporation and, while owners of said shares, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state, except as otherwise provided in this article;

(2) All lending institutions are authorized to become members of the corporation and to make loans to the corporation as provided in this article and such membership shall not constitute a violation of the prohibitions contained in Code Section 7-6-1;

(3) Each lending institution which becomes a member of the corporation is authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by or the shares of the capital stock of the corporation and, while owners of said stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the State of Georgia, provided that the amount of the capital of the corporation which may be acquired by any member pursuant to the authority granted in this Code section shall not exceed 5 percent of the capital base of such member; and

(4) The amount of shares of the corporation which any member is authorized to acquire pursuant to the authority granted in this Code section is in addition to the amount of shares in the corporation which such member may otherwise be authorized to acquire. (Code 1981, § 7-1-946, enacted by Ga. L. 1988, p. 804, § 1.)

**7-1-947. Application for membership; requirements for loans to corporation; member loan limits.**

(a) Any lending institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by said board.

(b) Each member of the corporation shall make member loans to the corporation when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits for member loans may, at the option of the board of directors, be established at the \$1,000.00 amount nearest the amount computed in accordance with this Code section; and

(2) No member loan to the corporation shall be made if immediately thereafter the total amount of the obligations (whether under member loans or otherwise) of the corporation would exceed 50 times the amount then paid in on the capital of the corporation.

(c) The total amount outstanding on member loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital of the corporation then held by such member, shall not exceed the lesser of:

(1) Twenty percent of the aggregate of the capital of the corporation then outstanding plus the total amount then outstanding on all member loans to the corporation, including in said total amount outstanding amounts validly called as member loans but not yet loaned;

(2) The following limit, to be determined each calendar year of membership on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding or, in the case of an insurance company, its last annual statement to the Commissioner of Insurance:

(A) Five percent of the statutory capital base of a bank or trust company;

(B) One-half of 1 percent of the total outstanding loans made by building and loan or savings and loan associations;

(C) Two and one-half percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies;

(D) Two and one-half percent of the unassigned surplus of mutual insurance companies, except fire insurance companies;

(E) One-tenth of 1 percent of the assets of fire insurance companies; and

(F) Such limits as may be approved by the board of directors of the corporation for other lending institutions; or

(3) Seven hundred fifty thousand dollars.

(d) Subject to paragraphs (1) and (3) of subsection (c) of this Code section, each call for member loans made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, as determined by reference to paragraph (2) of subsection (c) of this Code section, reduced by the balance of outstanding member loans made by such member to the corporation and the investment in capital of the corporation held by such member at the time of such call.

(e) All member loans to the corporation shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times and which shall bear interest at a rate of interest determined by the board of directors. (Code 1981, § 7-1-947, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 1989, p. 14, § 7.)

#### **7-1-948. Duration of membership; withdrawal.**

(a) Membership in the corporation shall be for the duration of the corporation, provided that, upon written notice given to the corporation two years in advance, a member may withdraw from membership in the corporation at the expiration of such notice.

(b) A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to notice of the intended withdrawal of said member. (Code 1981, § 7-1-948, enacted by Ga. L. 1988, p. 804, § 1.)

#### **7-1-949. Powers of shareholders and members.**

(a) The shareholders and the members of the corporation shall have the following powers of the corporation:

(1) To determine the number of and elect directors as provided in Code Section 7-1-951;

(2) To amend its articles as provided in Code Section 7-1-950;

(3) To dissolve the corporation as provided in Code Section 7-1-956; and

(4) To exercise such other of the powers of the corporation, consistent with this article, as may be conferred on the shareholders and the members by the bylaws.



(b) As to all matters requiring action by the shareholders and the members of the corporation, said shareholders and said members shall vote separately thereon by classes; and, except as otherwise provided in this article, such matters shall require the affirmative vote of a majority of the votes to which the shareholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

(c) Each shareholder shall have one vote, in person or by proxy, for each share of stock held by him; and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than \$1,000.00 shall have one additional vote, in person or by proxy, for each additional \$1,000.00 which such member is authorized to have outstanding on loans to the corporation at any one time, as determined under subsection (c) of Code Section 7-1-947.

(d) A holder of or subscriber to shares of the corporation or a member of the corporation shall be under no obligation to the corporation or its creditors with respect to such shares, subscriptions, or membership except in the circumstances set forth in Code Section 14-2-622, except that this subsection does not affect the obligation of a member to lend funds to the corporation pursuant to valid call. (Code 1981, § 7-1-949, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 1989, p. 946, § 74.)

#### **7-1-950. Amendment of articles.**

(a) Except as provided in subsections (b) and (c) of this Code section and subject to the approval of the department, the articles may be amended by the votes of the shareholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds of the votes to which the members shall be entitled.

(b) No amendment shall be adopted which is inconsistent with the general purposes expressed in paragraph (3) of subsection (a) of Code Section 7-1-941 or which authorizes any additional class of stock to be issued or which would tend to impair the ability of the department to examine and supervise the corporation.

(c) No amendment of the articles which increases the obligation of a member to make loans to the corporation or makes any change in the principal amount, interest rate, or maturity date or in the security or credit position of any outstanding loan of a member to the corporation or affects a member's right to withdraw from membership as provided in Code Section 7-1-948 or affects a member's voting rights as provided in this article shall be made without the consent of each member affected by such amendment.

(d) Within 30 days after any meeting at which an amendment to the articles is approved, it shall be submitted to the department together with

such information as the department shall require. If the department finds in its discretion that the proposed amendment is in conformity with the objectives and requirements of this article, it shall issue its certificate approving the amendment. If the amendment is disapproved, the department shall briefly state its reasons for such action to the corporation. The decision of the department shall be conclusive, except as it may be subject to judicial review as provided in Code Section 7-1-90.

(e) Upon the approval of the department, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and due adoption thereof, shall, together with the department's certificate of approval, be submitted to the Secretary of State, who shall examine them and, if he finds that they conform to the requirements of this article, shall so certify and endorse his approval thereon. (Code 1981, § 7-1-950, enacted by Ga. L. 1988, p. 804, § 1.)

#### **7-1-951. Board of directors; officers and agents.**

The business affairs of the corporation shall be managed and controlled by a board of directors, a president, a vice-president, a secretary, a treasurer, and such other officers and such agents as the corporation shall authorize by its bylaws. The board of directors shall consist of such number, not less than nine nor more than 15, as shall be determined in the first instance by the incorporators and thereafter annually by the members and the shareholders of the corporation. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the shareholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies except vacancies in the office of director, which shall be filled as provided in this Code section. The annual meeting shall be held prior to May 1 or, if no annual meeting shall be held in the year of incorporation, then within 90 days after the approval of the articles at a special meeting as provided in this Code section. At such annual meeting or at each special meeting held as provided in this Code section, the members of the corporation shall elect one-fifth of the board of directors and the shareholders shall elect the remaining directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after the election and until their successors are elected and qualified, unless sooner removed in accordance with provisions of the bylaws. Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the shareholders shall be filled by the directors elected by the shareholders. Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the willful misconduct of such directors and officers. Directors shall serve without compensation. (Code 1981, § 7-1-951, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 1990, p. 176, § 4.)

**7-1-952. Setting apart net earnings; fiscal year.**

(a) Each year the corporation shall set apart its net earnings for all the preceding fiscal year. Whenever the amount of minimum capital established in Code Section 7-1-941 shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors after providing for such reserves as said directors deem desirable, and the determination of the directors made in good faith shall be conclusive on all persons.

(b) Corporations organized under this article shall adopt the calendar year as their fiscal year. (Code 1981, § 7-1-952, enacted by Ga. L. 1988, p. 804, § 1.)

**7-1-953. Deposit of corporate funds.**

The corporation shall not deposit any of its funds in any bank or other financial institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated. The corporation shall not receive money on deposit. (Code 1981, § 7-1-953, enacted by Ga. L. 1988, p. 804, § 1.)

**7-1-954. Departmental power over corporations.**

The department shall exercise the same power and authority over corporations organized under this article as is now or hereafter exercised over banks and trust companies by Articles 1 and 2 of this chapter where such law is not in conflict with this chapter. (Code 1981, § 7-1-954, enacted by Ga. L. 1988, p. 804, § 1.)

**7-1-955. First meeting.**

(a) The first meeting of the corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed or delivered to each incorporator at least five days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

(b) At such first meeting, the incorporators shall organize by the choice, by ballot, of a temporary clerk; by the adoption of bylaws; by the election, by ballot, of directors; and by action upon such other matters within the



powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Four of the incorporators shall be a quorum for the transaction of business. (Code 1981, § 7-1-955, enacted by Ga. L. 1988, p. 804, § 1.)

#### **7-1-956. Duration of corporation; dissolution.**

(a) The period of duration of the corporation shall be 35 years, subject, however, to the right of its shareholders and the members to dissolve the corporation prior to the expiration of said period as provided in subsection (b) of this Code section.

(b) The corporation may, upon the votes of the shareholders and the members of the corporation, voting separately by classes, dissolve said corporation; and such dissolution shall require approval by the affirmative vote of two-thirds of the votes to which the shareholders shall be entitled. Upon any dissolution of the corporation, none of the corporation's assets shall be distributed to the shareholders until all sums due the members of the corporation as creditors thereof have been paid in full. (Code 1981, § 7-1-956, enacted by Ga. L. 1988, p. 804, § 1.)

#### **RESEARCH REFERENCES**

**ALR.** — Propriety of applying minority discount to value of shares purchased by corporation or its shareholders from minority shareholders, 13 ALR5th 840.

#### **7-1-957. State indebtedness not to be created.**

Under no circumstances shall the credit of the State of Georgia be pledged to any corporation organized under this article nor shall acts of such corporation in any manner constitute or result in the creation of any indebtedness of the State of Georgia or any county or municipal corporation therein. (Code 1981, § 7-1-957, enacted by Ga. L. 1988, p. 804, § 1.)

#### **7-1-958. Tax exemptions, credits, and privileges; occupational license taxes.**

(a) Any tax exemptions, tax credits, or tax privileges granted to banks or trust companies, building and loan associations, and other lending institutions by any general laws of this state are granted to corporations organized pursuant to this article.

(b) Every corporation organized and engaged in business under this article shall pay an annual state occupational license tax of \$50.00. Counties and municipalities are authorized, in addition, to levy the occupational license taxes as prescribed; provided, however, that no county or municipality shall levy any such occupational license tax in a greater amount than

those prescribed. (Code 1981, § 7-1-958, enacted by Ga. L. 1988, p. 804, § 1.)

## ARTICLE 13

### LICENSING OF MORTGAGE LENDERS AND MORTGAGE BROKERS

**Cross references.** — Real estate brokers' license requirement, § 44-3-190.

**Law reviews.** — For note on 1993 enactment of this article, see 10 Ga. St. U.L. Rev. 11 (1993). For note on the 1994 amend-

ments of Code Sections 7-1-1000 to 7-1-0006, 7-1-1008, 7-1-1010 to 7-1-1011, 7-1-1014, 7-1-1016 to 7-1-1018 and enactment of Code Section 7-1-1021 of this article, see 11 Ga. St. U.L. Rev. 41 (1994).

### RESEARCH REFERENCES

**C.J.S.** — 59 C.J.S. (Rev), Mortgages, § 73 et seq.

#### 7-1-1000. Definitions.

As used in this article, the term:

(1) "Affiliate" or "person affiliated with" means, when used with reference to a specified person, a person who directly, indirectly, or through one or more intermediaries controls, is controlled by, or is under common control with the person specified. Any beneficial owner of 20 percent or more of the combined voting power of all classes of voting securities of a person or any executive officer, director, trustee, joint venturer, or general partner of a person is an affiliate of such person unless the shareholder, executive officer, director, trustee, joint venturer, or general partner shall prove that he or she in fact does not control, is not controlled by, or is not under common control with such person.

(2) "Audited financial statement" means the product of the examination of financial statements in accordance with generally accepted auditing standards by an independent certified public accountant or by an independent Georgia registered public accountant considered acceptable by the department, which product consists of an opinion on the financial statements indicating their conformity with generally accepted accounting principles.

(3) "Commitment" or "commitment agreement" means a statement by a lender required to be licensed or registered under this article that sets forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower.

(4) "Control," including "controlling," "controlled by," and "under common control with," means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(5) "Executive officer" means the chief executive officer, the president, the principal financial officer, the principal operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person's business, the secretary, the treasurer, or any other person performing similar managerial or supervisory functions with respect to any organization whether incorporated or unincorporated.

(6) "Extortionate means" means the use or the threat of violence or other criminal means to cause harm to the person, reputation of the person, or property of the person.

(6.1) "Georgia Residential Mortgage Act" means this article.

(7) "License" means a license issued by the department under this article to act as a mortgage lender or mortgage broker.

(8) "Lock-in agreement" means a written agreement whereby a lender or a broker required to be licensed or registered under this article guarantees for a specified number of days or until a specified date the availability of a specified rate of interest for a mortgage loan, a specified formula by which the rate of interest will be determined, or a specific number of discount points if the mortgage loan is approved and closed within the stated period of time.

(9) "Makes a mortgage loan" means to advance funds, offer to advance funds, or make a commitment to advance funds to an applicant for a mortgage loan.

(10) "Misrepresent" means to make a false statement of a substantive fact or to engage in, with the intent to deceive or mislead, any conduct which leads to a false belief which is material to the transaction.

(11) "Mortgage broker" means any person who directly or indirectly solicits, processes, places, or negotiates mortgage loans for others, or offers to solicit, process, place, or negotiate mortgage loans for others or who closes mortgage loans which may be in the mortgage broker's own name with funds provided by others and which loans are assigned within 24 hours of the funding of the loans to the mortgage lenders providing the funding of such loans.

(12) "Mortgage lender" means any person who directly or indirectly makes, originates, or purchases mortgage loans or who services mortgage loans.

(13) "Mortgage loan" means a loan or agreement to extend credit made to a natural person, which loan is secured by a deed to secure debt, security deed, mortgage, security instrument, deed of trust, or other document representing a security interest or lien upon any interest in one-to-four family residential property located in Georgia, regardless of where made, including the renewal or refinancing of any such loan.



(14) "Person" means any individual, sole proprietorship, corporation, limited liability company, partnership, trust, or any other group of individuals, however organized.

(15) "Registrant" means any person required to register pursuant to Code Sections 7-1-1001 and 7-1-1003.2.

(16) "Residential property" means improved real property used or occupied, or intended to be used or occupied, as the principal residence of a natural person. Such term does not include rental property or second homes.

(17) "Service a mortgage loan" means the collection or remittance for another or the right to collect or remit for another of payments of principal, interest, trust items such as insurance and taxes, and any other payments pursuant to a mortgage loan.

(18) "Ultimate equitable owner" means a natural person who, directly or indirectly, owns or controls an ownership interest in a corporation or any other form of business organization, regardless of whether such natural person owns or controls such ownership interest through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, limited liability companies, partnerships, trusts, joint-stock companies, other entities or devices, or any combination thereof. (Code 1981, § 7-1-1000, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 1; Ga. L. 1996, p. 848, § 13; Ga. L. 1997, p. 143, § 7; Ga. L. 1997, p. 485, §§ 29, 30; Ga. L. 2000, p. 174, § 22.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1993, "attorney" was substituted for "attorneys" in paragraph (12) (now paragraph (18)).

**Law reviews.** — For note, "State-Imposed Interest Rate Ceilings and Home Equity Loan Scandal in Georgia," see 11 Ga. St. U.L. Rev. 591 (1995).

### **7-1-1001. Exemption for certain persons and entities; registration requirements.**

The following persons shall not be required to obtain a mortgage broker or mortgage lender license and shall not be subject to the provisions of this article but may be subject to registration or notification requirements, unless otherwise provided by this article:

(1) Any lender authorized to engage in business as a bank, credit card bank, savings institution, building and loan association, or credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia, the deposits of which are federally insured;

(2) Any wholly owned subsidiary of any lender described in paragraph (1) of this Code section; provided, however, such subsidiary shall be subject to the filing of a notification statement in order to facilitate the

department's handling of consumer inquiries. Such requirements are contained in Code Section 7-1-1003.4. Any subsidiary which fails to file the notification statement or keep the information current will immediately be subject to the registration requirements of this article. In addition, any subsidiary that violates any applicable law of this article may be subject to a cease and desist order as provided for in Code Section 7-1-1018;

(2.1) Any wholly owned subsidiary of any bank holding company; provided, however, such subsidiary shall be subject to registration requirements in order to facilitate the department's handling of consumer inquiries. Such requirements are contained in Code Section 7-1-1003.3;

(3) An attorney at law licensed to practice law in Georgia who is not principally engaged in negotiating mortgage loans when such attorney renders services in the course of his or her practice as an attorney at law;

(4) A real estate broker or real estate salesperson not actively engaged in the business of negotiating mortgage loans; however, a real estate broker or real estate salesperson who receives any fee, commission, kickback, rebate, or other payment for directly or indirectly negotiating, placing, or finding a mortgage for others shall not be exempt from the provisions of this article;

(5) Any person performing any act relating to mortgage loans under order of any court;

(6) Any natural person or the estate of or trust created by a natural person making a mortgage loan with his or her own funds for his or her own investment, including those natural persons or the estates of or trusts created by such natural persons who make a purchase money mortgage for financing sales of their own property;

(7) The United States of America, the State of Georgia or any other state, and any agency, division, or corporate instrumentality of any governmental entity, including without limitation: the Georgia Housing and Finance Authority, the Georgia Development Authority, the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association (GNMA), the United States Department of Housing and Urban Development (HUD), the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), the Farmers Home Administration (FmHA), and the Farm Credit Administration and its chartered agricultural credit associations;

(8) Any person who makes a mortgage loan to an employee of such person as an employment benefit;

(9) Any licensee under Chapter 3 of this title, the "Georgia Industrial Loan Act," provided that any mortgage loan made by such licensee is for \$3,000.00 or less;

(10) Nonprofit corporations making mortgage loans to promote home ownership or improvements for the disadvantaged;

(11) A natural person employed by a licensed mortgage broker, a licensed mortgage lender, or any person exempted from the licensing requirements of this article when acting within the scope of employment and under the supervision of the licensee or exempted person as an employee and not as an independent contractor. To be exempt, a natural person must be employed by only one such employer and must be at all times eligible for employment in compliance with the provisions and prohibitions of Code Section 7-1-1004;

(12) Any person who purchases mortgage loans from a mortgage broker or mortgage lender solely as an investment and who is not in the business of brokering, making, purchasing, or servicing mortgage loans; or

(13) Any natural person who makes five or fewer mortgage loans in any one calendar year. A person other than a natural person who makes five or fewer mortgage loans in any one calendar year shall not be exempt from the licensing requirements of this article unless such person applies for and is granted an exemption by the department in accordance with regulations promulgated by the department. (Code 1981, § 7-1-1001, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 2; Ga. L. 1996, p. 848, § 14; Ga. L. 1997, p. 485, § 31; Ga. L. 1999, p. 674, § 30; Ga. L. 2000, p. 174, § 23; Ga. L. 2003, p. 843, § 16.)

**The 2003 amendment**, effective July 1, 2003, added “and must be at all times eligible for employment in compliance with the provisions and prohibitions of Code Section 7-1-1004” at the end of paragraph (11).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1993, a semicolon

was substituted for a period at the end of paragraph (6) of subsection (a)(now paragraph (6)).

Pursuant to Code Section 28-9-5, in 2000, “Code section” was substituted for “subsection” in the first sentence in paragraph (2).

**7-1-1002. Transaction of business without a license, registration, or exemption prohibited; knowing purchase of mortgage loan from unlicensed or nonexempt broker or lender prohibited; liability of persons controlling violators.**

(a) On and after July 1, 1993, it is prohibited for any person to transact business in this state directly or indirectly as a mortgage broker or a mortgage lender unless such person:

(1) Is licensed or registered as such by the department;

(2) Is a person exempted from the licensing or registration requirements pursuant to Code Section 7-1-1001; or

(3) In the case of an employee of a mortgage broker or mortgage lender, such person has qualified to be relieved of the necessity for a



license under the employee exemption in paragraph (11) of Code Section 7-1-1001.

(b) On and after July 1, 1995, it is prohibited for any person, as defined in Code Section 7-1-1000, including a corporation but not including any natural person who purchases five or fewer mortgage loans in any one calendar year solely as an investment and who is not in the business of brokering, making, purchasing, or servicing mortgage loans, knowingly to purchase, sell, or transfer one or more mortgage loans or loan applications from or to a mortgage broker or mortgage lender who is neither licensed nor exempt from the licensing or registration provisions of this article. Such a purchase shall not affect the obligation of the borrower under the terms of the mortgage loan. The department shall provide for distribution or availability of information regarding approved or revoked licenses.

(c) On or after July 1, 1996, every person who directly or indirectly controls a person who violates subsection (a) or (b) of this Code section, every general partner, executive officer, joint venturer, or director of such person, and every person occupying a similar status or performing similar functions as such person violates with and to the same extent as such person, unless the person whose violation arises under this subsection sustains the burden of proof that he or she did not know and, in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the original violation is alleged to exist. (Code 1981, § 7-1-1002, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1995, p. 673, § 33; Ga. L. 1996, p. 848, § 15; Ga. L. 1998, p. 795, § 28; Ga. L. 2000, p. 174, § 24; Ga. L. 2003, p. 843, § 17.)

**The 2003 amendment**, effective July 1, 2003, in subsection (a), deleted “or” at the end of paragraph (a)(1), substituted “; or” for a period at the end of paragraph (a)(2), and added paragraph (a)(3); and inserted

“solely as an investment and who is not in the business of brokering, making, purchasing, or servicing mortgage loans” in the middle of the first sentence of subsection (b).

### **7-1-1003. Applications for licenses.**

(a) An application for a license under this article shall be made in writing, under oath, and in such form as the department may prescribe. The department, by regulation, may prescribe different classes of licenses for both mortgage brokers and mortgage lenders.

(b) The application shall include the following:

(1) The legal name and address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, and director thereof;

(2) The name under which the applicant will conduct business in Georgia;

(3) The address of the main office or principal place of business where books and records are located and any other locations at which the applicant will engage in any business activity covered by the provisions of this article, together with the mailing address where the department shall send all correspondence, orders, or notices. Any changes in this mailing address must be delivered in writing to the department before the change is effective;

(4) The complete name and address of the applicant's initial registered agent and registered office for service of process in Georgia. If the applicant is a Georgia corporation, this registered agent shall be the same as the agent recorded with the Secretary of State. Any changes in the registered agent or registered office shall be delivered in writing to the department and the Secretary of State, if applicable, before the change is effective. The registered agent may, but is not required to, be an officer of the applicant, and the registered office must be a Georgia location where the registered agent may be served;

(5) The general plan and character of the business;

(6) A financial statement of the applicant;

(7) Such other data, financial statements, and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, agents, or ultimate equitable owners of 10 percent or more of the applicant; and

(8) For mortgage brokers, evidence of satisfaction of experience or education requirements, as required by regulations of the department.

(c) The application shall be filed together with:

(1) Investigation and supervision fees established by regulation. The investigation fee shall not be refundable; provided, however, any supervision fee paid at the time of the application shall be refunded if the license is not granted; and

(2) The items required by Code Section 7-1-1003.2. (Code 1981, § 7-1-1003, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 3; Ga. L. 1996, p. 848, § 16; Ga. L. 1999, p. 674, § 31; Ga. L. 2000, p. 174, § 25; Ga. L. 2001, p. 970, § 10.)

#### **7-1-1003.1. Physical place of business.**

If the applicant for a mortgage broker license or a renewal of such license does not have a physical place of business in Georgia, a license or renewal may only be issued if the applicant's home state does not require that in order to be licensed a mortgage broker must have a physical place of business in such home state. In either case, an applicant must have a

registered agent and a registered office in this state. (Code 1981, § 7-1-1003.1, enacted by Ga. L. 1998, p. 590, § 1; Ga. L. 1999, p. 674, § 32.)

**7-1-1003.2. Financial requirements for licensing and registration.**

(a) Each licensed mortgage broker must provide the department with a bond. The bond for a mortgage broker shall be in the principal sum of \$50,000.00 or such greater sum as the department may require and the bond shall meet the other requirements of subparagraph (c)(2)(B) of this Code section. In lieu of a bond, a mortgage broker may provide the department with evidence from the United States Department of Housing and Urban Development that the broker is a loan correspondent under Title I, Title II, or Title I and Title II for each year the broker is licensed by the department. The bond and the United States Department of Housing and Urban Development requirements are continuous in nature.

(b) Except as otherwise provided in subsection (c) of this Code section, the department shall not license or register any mortgage lender unless the applicant or registrant provides the department with a bond. The bond for a mortgage lender shall be in the principal sum of \$150,000.00 or such greater sum as the department may require and which bond shall meet the other requirements of subparagraph (c)(2)(B) of this Code section. In lieu of bond a lender may provide the department with an audited financial statement covering the most recent fiscal year preceding the date of the application or registration and such other financial data as the department may require that disclose that the applicant or registrant has a bona fide and verifiable tangible net worth of \$250,000.00 or such greater amount as the department may reasonably require, which net worth must be continuously maintained as a condition of licensure or registration.

(c) The department may issue a mortgage lender's license to an applicant with a bona fide and verifiable tangible net worth of less than \$250,000.00 but not less than \$100,000.00, provided that such applicant satisfies the following requirements in support of an application for a mortgage lender's license in addition to all other applicable requirements for licensure under this article:

(1) The applicant shall certify that such applicant transfers or assigns all mortgage loans funded with such applicant's own funds, including, but not limited to, draws on a warehouse line of credit to another mortgage lender prior to the due date of the first payment by the borrower but in no event later than 45 days after the date of funding; and

(2) The applicant shall submit the following to the department:

(A) Audited financial statements covering the applicant's most recent fiscal year preceding the date of the application and such other financial data as the department may require that disclose that the



applicant has a bona fide and verifiable tangible net worth of \$100,000.00 or such greater amount as the department may reasonably require;

(B) A corporate surety bond in the principal amount of \$100,000.00, which bond shall be for a term and in a form satisfactory to the department, shall be issued by a bonding company or insurance company authorized to do business in this state and approved by the department, and shall run to the State of Georgia for the benefit of any person damaged by noncompliance of a licensee with any condition of such bond. Damages under the bond shall include moneys owed to the department for fees, fines, or penalties. Such bond shall be continuously maintained thereafter in full force. Such bond shall be conditioned upon the applicant or the licensee conducting his or her licensed business in conformity with this article and all applicable laws; and

(C) Evidence of having received approval to participate as a mortgagee loan correspondent in the mortgage insurance programs administered by the United States Department of Housing and Urban Development.

(d) An irrevocable letter of credit from a federally insured financial institution in form and terms acceptable and payable to the department may be substituted for the bond requirement for a mortgage broker or mortgage lender license.

(e) Any person including the department who may be damaged by noncompliance of a licensee with any condition of a bond may proceed on such bond against the principal or surety thereon, or both, to recover damages.

(f) The department may promulgate rules and regulations with respect to the definition of net worth and the requirement for maintaining net worth as a condition of licensure or registration.

(g) Both the net worth requirement and the bond, wherever applicable, must be continuously maintained as a condition of licensure or registration. (Code 1981, § 7-1-1003.2, enacted by Ga. L. 2000, p. 174, § 26; Ga. L. 2001, p. 970, § 11; Ga. L. 2003, p. 843, § 18; Ga. L. 2004, p. 458, § 11.)

**The 2003 amendment**, effective July 1, 2003, in subsection (a), designated the paragraphs, added a colon after “may” in the introductory paragraph, in paragraph (1), substituted “Provide” for “provide” and substituted “\$100,000.00; or” for “\$25,000.00” and substituted the present provisions of paragraph (a)(2) for “Upon initial application and submission of the bond, such mortgage brokers must submit

an unaudited financial statement certified to be true and correct by the mortgage broker.”; and, in subsection (b), substituted “provides the department with a bond.” for “submits” in the first sentence, added the second sentence, and substituted “In lieu of bond a lender may provide the department with an audited financial statement” for “audited financial statements” at the beginning of the present third sentence.

**The 2004 amendment**, effective July 1, 2004, substituted the present provisions of subsection (a) for the former provisions which read: “(a) Each licensed mortgage broker must provide the department with a bond. The bond for a mortgage broker shall be in the principal sum of \$50,000.00 or such greater sum as the department may require and the bond shall meet the other requirements of subparagraph (c)(2)(B) of this Code section. In lieu of a bond, a mortgage broker may:

“(1) Provide the department with an audited financial statement that discloses that

the broker has a bona fide and verifiable tangible net worth of \$100,000.00; or

“(2) Provide the department with evidence from the United States Department of Housing and Urban Development that the broker is a loan correspondent under Title I, Title II, or Title I and Title II for each year the broker is licensed by the department. Such requirement shall be continuous in nature.”

**Law reviews.** — For article, “Business Associations,” see 53 Mercer L. Rev. 109 (2001).

### **7-1-1003.3. Application for registration.**

An application to register as a mortgage lender or broker under this article shall be made annually in writing, under oath, on a form provided by the department, subject to requirements specified by rules and regulations of the department. (Code 1981, § 7-1-1003.3, enacted by Ga. L. 2000, p. 174, § 26; Ga. L. 2004, p. 458, § 12.)

**The 2004 amendment**, effective July 1, 2004, deleted the subsection (a) designation; inserted “annually” and substituted “, subject to requirements specified by rules and regulations of the department” for

“and shall be renewed each year by April 1” at the end; and deleted former subsection (b) which read: “The application shall include all of the items requested of applicants for licenses in Code Section 7-1-1003.”

### **7-1-1003.4. Notification statement.**

(a) A notification statement shall contain the following:

(1) The name or names under which business will be conducted in Georgia;

(2) The name and address of the parent financial institution;

(3) The name, mailing address, telephone number, and fax number of the person or persons responsible for handling consumer inquiries and complaints;

(4) The name and address of the registered agent for service of process in Georgia; and

(5) A statement signed by the president or chief executive officer of the entity stating that the entity will receive and process consumer inquiries and complaints promptly, fairly, and in compliance with all applicable laws.

(b) A notification statement shall be filed before commencing to do a mortgage business in this state and shall be updated by the entity as the

information changes. Any entity which fails to file the notification statement or keep the information current will immediately be subject to the registration requirements of Code Section 7-1-1003.3. (Code 1981, § 7-1-1003.4, enacted by Ga. L. 2000, p. 174, § 26.)

**7-1-1004. Investigation of applicant and its officers; audit; education, experience, and other requirements relative to licensees and registrants.**

(a) Upon receipt of an application for license, the department shall conduct such investigation as it deems necessary to determine that the applicant and the individuals who direct the affairs or establish policy for the licensee, including the officers, directors, or the equivalent, are of good character and ethical reputation; that the applicant and such persons meet the requirements of subsection (d) of this Code section; that the applicant and such persons demonstrate reasonable financial responsibility; that the applicant has reasonable policies and procedures to receive and process customer grievances and inquiries promptly and fairly; and that the applicant has and maintains a registered agent for service in this state.

(b) The department shall not license any applicant unless it is satisfied that the applicant may be expected to operate its mortgage lending or brokerage activities in compliance with the laws of this state and in a manner which protects the contractual and property rights of the citizens of this state.

(c) The department may establish by rule or regulation minimum education or experience requirements for an applicant for a mortgage broker license or renewal of such a license.

(d) The department may not issue or may revoke a license if it finds that the applicant, or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant or any individual who directs the affairs or establishes policy for the licensee, has been convicted of a felony involving moral turpitude in any jurisdiction or of a crime which, if committed within this state, would constitute a felony involving moral turpitude under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, unless and until such plea of guilty, or such decision, judgment, or verdict, shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first



offender have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction was had or shall have received an official certification or pardon granted by the State Board of Pardons and Paroles which removes the legal disabilities resulting from such conviction and restores civil and political rights in this state.

(e) The department shall be authorized to obtain conviction data with respect to any applicant or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant and any individual who directs the affairs of the company or establishes policy. The department shall submit to the Georgia Crime Information Center two complete sets of fingerprints of such applicant or such person, together with the required records search fees and such other information as may be required. Fees for background checks that the department administers shall be sent to the department by applicants and licensees together with the fingerprints. Applicants and licensees shall have the primary responsibility for obtaining background checks of covered employees which are defined as employees who work in this state and also have the authority to enter, delete, or verify any information on any mortgage loan application form or document. The department shall, however, retain the right to obtain conviction data on covered employees.

(f) Every licensee and applicant shall be authorized and required to obtain background checks on covered employees. Such background checks shall be handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information Center. Licensees and applicants shall be responsible for any applicable fees charged by the center. An applicant or licensee may employ a person whose background must be checked and has 90 days from the date of hire to obtain satisfactory background data. This provision does not apply to directors, officers, partners, agents, or ultimate equitable owners of 10 percent or more or to persons who direct the company's affairs or establish policy, whose background must have been investigated through the department before taking office, beginning employment, or securing ownership. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an employee has a criminal record in any state other than Georgia, the employer shall submit to the department two complete sets of fingerprints of such person, together with the applicable fees and any other required information. The department shall submit such fingerprints as provided in subsection (e) of this Code section.

(g) Upon receipt of fingerprints, fees, and other required information, the Georgia Crime Information Center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and

promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding. All conviction data received by the department or by the applicant or licensee shall be used by the party requesting such data for the exclusive purpose of carrying out the responsibilities of this article, shall not be a public record, shall be privileged, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect the file. The department shall be entitled to review any applicant's or licensee's files to determine whether the required background checks have been run and whether all covered employees are qualified. The department shall be authorized to discuss the status of employee background checks with licensees. All such records shall be maintained by the department and the applicant or licensee pursuant to laws regarding such records and the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable. As used in this subsection, "conviction data" means a record of a finding, verdict, or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought, subject to the conditions set forth in subsection (d) of this Code section. Violation of this Code section may subject a licensee to the revocation of its license.

(h) The department may deny or revoke a license or otherwise restrict a license if it finds that the applicant or any person who is a director, officer, partner, or ultimate equitable owner of 10 percent or more or person who directs the company's affairs or who establishes policy of the applicant has been in one or more of these roles as a mortgage lender, broker, or registrant whose license has been denied, revoked, or suspended within three years of the date of the application.

(i) The department may not issue a license to and may revoke a license from an applicant or licensee if such person employs any other person against whom a final cease and desist order has been issued within the preceding three years, if such order was based on a violation of Code Section 7-1-1013 or based on the conducting of a mortgage business without a required license, or whose license has been revoked within three years of the date such person was hired. Each applicant and licensee shall, before hiring an employee, examine the department's public records to determine that such employee is not subject to the type of cease and desist order described in this subsection.

(j) Within 90 days after receipt of a completed application and payment of licensing fees prescribed by this article, the department shall either grant or deny the request for license.

(k) A person shall not be indemnified for any act covered by this article or for any fine or penalty incurred pursuant to this article as a result of any

violation of the law or regulations contained in this article, due to the legal form, corporate structure, or choice of organization of such person, including but not limited to a limited liability company. (Code 1981, § 7-1-1004, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 4; Ga. L. 1996, p. 848, § 17; Ga. L. 1998, p. 795, § 29; Ga. L. 1999, p. 674, § 33; Ga. L. 2000, p. 174, § 27; Ga. L. 2001, p. 4, § 7; Ga. L. 2001, p. 970, § 12; Ga. L. 2002, p. 1220, § 11; Ga. L. 2003, p. 843, § 19; Ga. L. 2004, p. 458, § 13; Ga. L. 2004, p. 631, § 7.)

**The 2002 amendment**, effective July 1, 2002, rewrote this Code section.

**The 2003 amendment**, effective July 1, 2003, in subsection (h), deleted “agent,” following “partner,” near the beginning, inserted “who”, and substituted “been in one or more of these roles at a mortgage lender, broker, or registrant whose license has been” for “had a license” near the end.

**The 2004 amendments.** — The first 2004 amendment, effective July 1, 2004, added

the last sentence in subsection (i). The second 2004 amendment, effective May 13, 2004, part of an Act to revise, modernize, and correct the Code, substituted “governor” for “Governor” in subsection (d) and substituted “as” for “at” in subsection (h).

**Law reviews.** — For article, “Administrative Law,” see 53 Mercer L. Rev. 81 (2001). For article, “Business Associations,” see 53 Mercer L. Rev. 109 (2001).

## JUDICIAL DECISIONS

**Standing to challenge constitutionality.** — After proceedings to revoke the license of a mortgage lending company for allegedly having an impermissible relationship with an individual in violation of O.C.G.A.

§ 7-1-1004(e), the individual, a convicted felon, had standing to bring an independent declaratory judgment action questioning the constitutionality of the subsection. *Agan v. State*, 272 Ga. 540, 533 S.E.2d 60 (2000).

## 7-1-1005. Renewal of licenses and registrations.

(a) Except as otherwise specifically provided in this article, all licenses and registrations issued pursuant to this article shall expire on June 30 of each year and application for renewal shall be made annually on or before April 1 of each year; provided, however, that licenses and registrations issued for the calendar year 2000 will expire on June 30, 2001.

(b) Any licensee or registrant making proper application, including all supporting documents, moneys owed to the department, and all applicable fees required by this article and any regulations promulgated by the department, for a license or registration renewal to operate during the following license year and filing the application prior to April 1 shall be permitted to continue to operate pending final approval or disapproval of the application for the license or registration renewal for the following year if final approval or disapproval is not granted prior to July 1.

(c) No investigation fee shall be payable in connection with the renewal application, but an annual license or registration fee established by regulation of the department to defray the cost of supervision shall be paid with each renewal application, which fee shall not be refunded or prorated if the renewal application is approved.



(d) Any person holding a license or registration pursuant to this article who fails to file a proper application for a license or registration renewal for the following license year, including the proper fee accompanying the application, on or before April 1 and who files an application after April 1 may be required to pay, in addition to the license or registration fees, a fine in an amount to be established by regulations promulgated by the department. (Code 1981, § 7-1-1005, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 5; Ga. L. 2000, p. 174, § 28; Ga. L. 2001, p. 970, § 13.)

**Law reviews.** — For article, “Business Associations,” see 53 Mercer L. Rev. 109 (2001).

**7-1-1006. Contents of license; posting of license; transferring of license; transacting business under other name; change of address; opening additional office without prior approval; approval of branch manager.**

(a) Each license issued under this article shall state the name of the licensee.

(b) A licensee shall post a copy of such license in a conspicuous place in each place of business of the licensee.

(c) A license may not be transferred or assigned.

(d) No licensee shall transact business under any name other than that designated in the license.

(e) Each licensee shall notify the department in writing of any change in the address of the principal place of business or of any additional location of business in Georgia, any change in registered agent or registered office, any change of principal officer, director, contact person for consumer complaints, or ultimate equitable owner of 10 percent or more of any corporation or other entity licensed under this article, or of any material change in the licensee’s financial statement. Notice of a change in address or an addition of a new location shall be submitted no later than 15 days before the change is made. Notice of other changes must be received by the department no later than 30 business days after the change is effective.

(f) No licensee shall open an additional office in Georgia without prior approval of the department. Applications for such additional office shall be made in writing on a form prescribed by the department and shall be accompanied by payment of a \$350.00 nonrefundable application fee. The application shall be approved unless the department finds that the applicant has not conducted business under this article efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the department to the applicant within 30 days of the date the application is

received by the department. After approval, the applicant shall give written notice to the department within ten days of the commencement of business at the additional office.

(g) All branch managers in Georgia must be approved by the department. A licensee may place a new branch manager subject to the department's approval but must file for approval within 15 days of the placement and must remove the person immediately should the department deny approval. (Code 1981, § 7-1-1006, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 97, § 7; Ga. L. 1994, p. 570, § 6; Ga. L. 1999, p. 674, § 34; Ga. L. 2000, p. 174, § 29.)

**Code Commission notes.** — Pursuant to substituted for "10 days" in the last sentence Code Section 28-9-5, in 1993, "ten days" was in subsection (f).

**7-1-1007. Licensee to give notice of certain actions brought against it by a creditor or borrower; notice to the department of cancellation of bond.**

(a) A licensee shall give notice to the department by registered or certified mail or statutory overnight delivery of any action which may be brought against it by any creditor or borrower where such action is brought under this article, involves a claim against the bond filed with the department for the purposes of compliance with Code Section 7-1-1003 or 7-1-1004, or involves a claim for damages in excess of \$25,000.00 for a broker and \$250,000.00 for a lender and of any judgment which may be entered against it by any creditor or any borrower or prospective borrower, with details sufficient to identify the action or judgment, within 30 days after the commencement of any such action or the entry of any such judgment.

(b) A corporate surety shall, within ten days after it pays any claim to any claimant, give notice to the department by registered or certified mail or statutory overnight delivery of such payment with details sufficient to identify the claimant and the claim or judgment so paid. Whenever the principal sum of such bond is reduced by one or more recoveries or payments thereon, the licensee shall furnish a new or additional bond so that the total or aggregate principal sum of such bond or bonds shall equal the sum required under Code Section 7-1-1003 or 7-1-1004 or shall furnish an endorsement duly executed by the corporate surety reinstating the bond to the required principal sum thereof.

(c) A bond filed with the department for the purpose of compliance with Code Section 7-1-1003 or 7-1-1004 may not be canceled by either the licensee or the corporate surety except upon notice to the department by registered or certified mail or statutory overnight delivery with return receipt requested, the cancellation to be effective not less than 30 days after receipt by the department of such notice and only with respect to any breach of condition occurring after the effective date of such cancellation.

(d) A licensee or registrant shall, within ten days after knowledge of the event, report in writing to the department:

(1) Any knowledge or discovery of an act prohibited by Code Section 7-1-1013; and

(2) The discharge of any employee for dishonest or fraudulent acts.

Any person reporting such an event shall be protected from civil liability as provided in Code Section 7-1-1009. (Code 1981, § 7-1-1007, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1999, p. 674, § 35; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 1220, § 12.)

**The 2002 amendment**, effective July 1, 2002, in the first sentence of subsection (b), deleted “creditor or” preceding “claimant” and deleted “or creditor” following “claimant”.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1993, “ten days” was substituted for “10 days” in the second sentence in subsection (a)(now first sentence of subsection (b)).

Pursuant to Code Section 28-9-5, in 1999, “ten” was substituted for “10” in the introductory paragraph of subsection (d).

**Editor’s notes.** — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

**7-1-1008. Acquisition of 25 percent or more of the voting shares or of the ownership of any other entity licensed to conduct business under this article.**

(a) Except as provided in this Code section, on and after July 1, 1993, no person shall acquire directly or indirectly 25 percent or more of the voting shares of a corporation or 25 percent or more of the ownership of any other entity licensed to conduct business under this article unless it first:

(1) Files an application with the department in such form as the department may prescribe from time to time;

(2) Delivers such other information to the department as the department may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors and officers, if a corporation, and its members, if applicable, and of any proposed new directors, officers, or members of the licensee; and

(3) Pays such application fee as the department may prescribe.

(b) Upon the filing and investigation of an application, the department shall permit the applicant to acquire the interest in the licensee if it finds that the applicant and its members, if applicable, its directors and officers, if a corporation, and any proposed new directors and officers have the financial responsibility, character, reputation, experience, and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The department



shall grant or deny the application within 60 days from the date a completed application accompanied by the required fee is filed unless the period is extended by order of the department reciting the reasons for the extension. If the application is denied, the department shall notify the applicant of the denial and the reasons for the denial.

(c) The provisions of this Code section shall not apply to:

(1) The acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with a person licensed by this article or a person exempt from this article under Code Section 7-1-1001;

(2) The acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with a person affiliated through common ownership with the licensee; or

(3) The acquisition of an interest in a licensee by a person by bequest, descent, or survivorship or by operation of law.

The person acquiring an interest in a licensee in a transaction which is exempt from filing an application by this subsection shall send written notice to the department of such acquisition within 30 days of the closing of such transaction. (Code 1981, § 7-1-1008, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 7.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1993, “from” was substituted for “form” in paragraph (c)(1).

**7-1-1009. Maintenance of books, accounts, and records; investigation and examination of licensees and registrants by department; confidentiality; exemptions from civil liability.**

(a) Any person required to be licensed or registered under this article shall maintain at its offices or such other location as the department shall permit such books, accounts, and records as the department may reasonably require in order to determine whether such person is complying with the provisions of this article and rules and regulations adopted in furtherance thereof. Such books, accounts, and records shall be maintained apart and separate from any other business in which such person is involved.

(b) The department may, by its designated officers and employees, as often as it deems necessary, but at least once every 24 months, investigate and examine the affairs, business, premises, and records of any person required to be licensed or registered under this article insofar as such affairs, business, premises, and records pertain to any business for which a license or registration is required by this article. Notwithstanding the provisions of this subsection, the department has the discretion to examine a person less frequently, provided that its record of complaints, comments,

or other information demonstrates that person's ability to meet the standards of Code Sections 7-1-1003, 7-1-1003.2, and 7-1-1004. In the case of registrants, the department shall not be required to conduct such examinations if it determines that the registrant has been adequately examined by another bank regulatory agency. In order to avoid unnecessary duplication of examinations, the department may accept examination reports performed and produced by other state or federal agencies, unless the department determines that the examinations are not available or do not provide information necessary to fulfill the responsibilities of the department under this article.

(c) The department, at its discretion, may:

(1) Make such public or private investigations within or outside of this state as it deems necessary to determine whether any person has violated or is about to violate this article or any rule, regulation, or order under this article, to aid in the enforcement of this article, or to assist in the prescribing of rules and regulations pursuant to this article;

(2) Require or permit any person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated;

(3) Disclose information concerning any violation of this article or any rule, regulation, or order under this article, provided the information is derived from a final order of the department; and

(4) Disclose the imposition of an administrative fine or penalty under this article.

(d)(1) For the purpose of conducting any investigation as provided in this Code section, the department shall have the power to administer oaths, to call any party to testify under oath in the course of such investigations, to require the attendance of witnesses, to require the production of books, records, and papers, and to take the depositions of witnesses; and for such purposes the department is authorized to issue a subpoena for any witness or for the production of documentary evidence. Such subpoenas may be served by certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address, by examiners appointed by the department, or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, records, or paper resides or is found. The required fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state treasury for the use of the department in the same manner that other expenses of the department are paid.

(2) The department may issue and apply to enforce subpoenas in this state at the request of a government agency regulating mortgage lenders

or brokers of another state if the activities constituting the alleged violation for which the information is sought would be a violation of this article if the activities had occurred in this state.

(e) In case of refusal to obey a subpoena issued under this article to any person, a superior court of appropriate jurisdiction, upon application by the department, may issue to the person an order requiring him or her to appear before the court to show cause why he or she should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished as contempt by the court.

(f) Examinations and investigations conducted under this article and information obtained by the department in the course of its duties under this article are confidential, except as provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70 and in paragraphs (3) and (4) of subsection (c) of this Code section, the department is authorized to share information obtained under this article with other state and federal regulatory agencies or law enforcement authorities. In the case of such sharing, the safeguards to confidentiality already in place within such agencies or authorities shall be deemed adequate. The commissioner or an examiner specifically designated may disclose such limited information as is necessary to conduct a civil or administrative investigation or proceeding. The department shall compile information on the number of written complaints received on all licensees. Beginning August 1, 2001, and at least annually thereafter, the department shall disclose to the public the number of such complaints together with the number of Georgia residential mortgage loans made during the same period. In preparing the disclosure, the department shall be authorized to rely upon the number of mortgage loans reported to it in the mortgage license renewal application. Information contained in the records of the department which is not confidential and may be made available to the public either on the department's website or upon receipt by the department of a written request shall include:

(1) The name, business address, and telephone, fax, and license numbers of a licensee or registrant;

(2) The names and titles of the principal officers;

(3) The name of the owner or owners thereof;

(4) The business address of a licensee's or registrant's agent for service; and

(5) The terms of or a copy of any bond filed by a licensee or registrant.

(g) In the absence of malice, fraud, or bad faith, a person is not subject to civil liability arising from the filing of a complaint with the department or furnishing other information required by this Code section or required by



the department under the authority granted in this article. No civil cause of action of any nature shall arise against such person:

(1) For any information relating to suspected prohibited acts furnished to or received from law enforcement officials, their agents, or employees or to or from other regulatory or licensing authorities;

(2) For any such information furnished to or received from other persons subject to the provisions of this title; or

(3) For any such information furnished in complaints filed with the department.

(h) The commissioner or any employee or agent is not subject to civil liability, and no civil cause of action of any nature exists against such persons arising out of the performance of activities or duties under this article or by publication of any report of activities under this Code section. (Code 1981, § 7-1-1009, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1996, p. 848, § 18; Ga. L. 1998, p. 795, § 30; Ga. L. 1999, p. 674, § 36; Ga. L. 2000, p. 174, § 30; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 970, § 14; Ga. L. 2003, p. 843, § 20.)

**The 2003 amendment**, effective July 1, 2003, in subsection (f), designated the paragraphs, in the last sentence of the introductory paragraph, inserted "either on the department's website or" and added a colon at the end, in paragraph (f)(1), substituted "The" for "the", inserted "and telephone, fax," substituted "numbers" for "number", and added a semicolon at the end, added paragraph (f)(2), in paragraph (f)(3), substituted "The name of" for "and" and substituted a semicolon for a comma at the end, in paragraph (f)(4), substituted "The" for

"the name and" and substituted a semicolon for a comma at the end, and substituted "The" for "the" at the beginning of paragraph (f)(5).

**Editor's notes.** — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

**Law reviews.** — For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

### 7-1-1010. Annual financial statements.

(a) If a mortgage broker is a United States Department of Housing and Urban Development loan correspondent, such broker must also submit to the department the audit that is required for the United States Department of Housing and Urban Development. The department may require the mortgage broker to have made an audit of the books and affairs of the licensed or registered business and submit to the department an audited financial statement if the department finds that such an audit is necessary to determine whether the mortgage broker is complying with the provisions of this article and the rules and regulations adopted in furtherance of this article.

(b) Each mortgage lender licensed or registered under this article shall at least once each year have made an audit of the books and affairs of the

licensed or registered business and submit to the department at renewal an audited financial statement, except that a mortgage lender licensed or registered under this article which is a subsidiary shall comply with this provision by annually providing a consolidated audited financial statement of its parent company and a financial statement, which may be unaudited, of the licensee or registrant which is prepared in accordance with generally accepted accounting principles. A lender who utilizes a bond in lieu of an audit need not supply such audit, unless specially required by the department. An audit must be less than 15 months old to be acceptable. The department may by regulation establish additional minimum standards for audits and reports under this Code section. (Code 1981, § 7-1-1010, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 8; Ga. L. 1996, p. 848, § 19; Ga. L. 1999, p. 674, § 37; Ga. L. 2000, p. 174, § 31; Ga. L. 2004, p. 458, § 14.)

**The 2004 amendment**, effective July 1, 2004, substituted the present first sentence of subsection (a) for the former first sentence which read: "Each mortgage broker licensed or registered under this article shall submit to the department initially an unaudited financial statement certified to be true and correct by the mortgage broker; provided, however, that if the mortgage broker

is using its net worth and not a surety bond or letter of credit to meet the requirements for licensure in Code Section 7-1-1003.2, the mortgage broker shall submit to the department with the initial application for licensure and with any renewal applications an audited financial statement."; and added the second sentence in subsection (b).

#### **7-1-1011. Annual fees.**

(a) The department may, by regulation, prescribe annual fees to be paid by licensees and registrants, which fees shall be set at levels necessary to defray costs and expenses incurred by the state in providing the examinations and supervision required by this article and which fees may vary according to whether a person is a licensee or registrant or is a mortgage broker or a mortgage lender and according to the class of license issued to a mortgage broker or mortgage lender.

(b)(1) As used in this subsection, the term "collecting agent" means the person listed as the secured party on a security deed or other loan document that establishes a lien on the residential real property taken as collateral at the time of the closing of the mortgage loan transaction.

(2) There shall be imposed on the closing of every mortgage loan subject to regulation under this article which, as defined in Code Section 7-1-1000, includes all mortgage loans, whether or not closed by a licensee or registrant, a fee of \$6.50. The fee shall be paid by the borrower to the collecting agent at the time of closing of the mortgage loan transaction. The collecting agent shall remit the fee to the department at the time and in the manner specified by regulation of the department. Revenue collected by the department pursuant to this subsection shall be deposited in the general fund of the state.

(3) The fee imposed by this subsection shall be a debt from the borrower to the collecting agent until such assessment is paid and shall be recoverable at law in the same manner as authorized for the recovery of other debts. Any collecting agent who neglects, fails, or refuses to collect the fee imposed by this subsection shall be liable for the payment of the fee. (Code 1981, § 7-1-1011, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 9; Ga. L. 1995, p. 673, § 34.)

#### **7-1-1012. Rules and regulations.**

Without limitation on the power conferred by Article 1 of this chapter, the department may make reasonable rules and regulations, not inconsistent with law, for the enforcement of this article, to effectuate the purposes of this article, and to clarify the meaning of terms. (Code 1981, § 7-1-1012, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 2001, p. 970, § 15.)

#### **7-1-1013. Prohibition of certain acts.**

It is prohibited for any person transacting a mortgage business in or from this state, including any person required to be licensed or registered under this article and any person exempted from the licensing or registration requirements of this article under Code Section 7-1-1001, to:

(1) Misrepresent the material facts or make false statements or promises likely to influence, persuade, or induce an applicant for a mortgage loan, a mortgagee, or a mortgagor to take a mortgage loan, or pursue a course of misrepresentation to the department or anyone through agents or otherwise;

(2) Misrepresent or conceal or cause another to misrepresent or conceal material factors, terms, or conditions of a transaction to which a mortgage lender or broker is a party, pertinent to an applicant or application for a mortgage loan or a mortgagor;

(3) Fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan;

(4) Improperly refuse to issue a satisfaction of a mortgage loan;

(5) Fail to account for or deliver to any person any personal property obtained in connection with a mortgage loan such as money, funds, deposit, check, draft, mortgage, or other document or thing of value which has come into the possession of the mortgage lender or broker and which is not the property of the mortgage lender or broker, or which the mortgage lender or broker is not in law or at equity entitled to retain;

(6) Engage in any transaction, practice, or course of business which is not in good faith or fair dealing, or which operates a fraud upon any



person, in connection with the attempted or actual making of, purchase of, or sale of any mortgage loan;

(7) Engage in any fraudulent home mortgage underwriting practices;

(8) Induce, require, or otherwise permit the applicant for a mortgage loan or mortgagor to sign a security deed, note, loan application, or other pertinent financial disclosure documents with any blank spaces to be filled in after it has been signed, except blank spaces relating to recording or other incidental information not available at the time of signing;

(9) Make, directly or indirectly, any residential mortgage loan with the intent to foreclose on the borrower's property. For purposes of this paragraph, there is a presumption that a person has made a residential mortgage loan with the intent to foreclose on the borrower's property if the following circumstances can be demonstrated:

(A) Lack of substantial benefit to the borrower;

(B) Lack of probability of full payment of the loan by the borrower;  
and

(C) A significant proportion of similarly foreclosed loans by such person;

(10) Provide an extension of credit or collect a mortgage debt by extortionate means; or

(11) Purposely withhold, delete, destroy, or alter information requested by an examiner of the department or make false statements or material misrepresentations to the department during the course of an examination or on any application or renewal form sent to the department. (Code 1981, § 7-1-1013, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1996, p. 848, § 20; Ga. L. 1999, p. 674, § 38; Ga. L. 2000, p. 174, § 32.)

**Code Commission notes.** — Pursuant to was substituted for “subsection” in paragraph (9).

#### **7-1-1014. Regulations governing disclosure required to applicants for mortgage loans.**

In addition to such other rules, regulations, and policies as the department may promulgate to effectuate the purposes of this article, the department shall promulgate regulations governing the disclosure required to be made to applicants for mortgage loans, including, without limitation, the following requirements:

(1) Any person required to be licensed or registered under this article shall provide to each applicant for a mortgage loan prior to accepting an application fee or any third-party fee such as a property appraisal fee, credit report fee, or any other similar fee a disclosure of the fees payable and the conditions under which such fees may be refundable;

(2) Any mortgage lender required to be licensed or registered under this article shall make available to each applicant for a mortgage loan at or before the time a commitment to make a mortgage loan is given a written disclosure of the fees to be paid in connection with the commitment and the loan, or the manner in which such fees shall be determined and the conditions under which such fees may be refundable; and

(3) Any mortgage lender required to be licensed or registered under this article shall disclose to each borrower of a mortgage loan that failure to meet every condition of the mortgage loan may result in the loss of the borrower's property through foreclosure. The borrower shall be required to sign the disclosure at or before the time of the closing of the mortgage loan.

The department may prescribe standards regarding the accuracy of required disclosures and may provide for applicable administrative or civil penalties or fines for failure to provide the disclosures or to meet the prescribed standards. (Code 1981, § 7-1-1014, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 10; Ga. L. 2001, p. 970, § 16.)

#### **7-1-1015. Rules relative to escrow accounts.**

The department may promulgate rules with respect to the placement in escrow accounts by any person required to be licensed or registered by this article of any money, fund, deposit, check, or draft entrusted to it by any persons dealing with it as a residential mortgage broker, lender, or servicer. (Code 1981, § 7-1-1015, enacted by Ga. L. 1993, p. 543, § 1.)

#### **7-1-1016. Regulations relative to advertising.**

In addition to such other rules, regulations, and policies as the department may promulgate to effectuate the purpose of this article, the department shall prescribe regulations governing the advertising of mortgage loans, including without limitation the following requirements:

(1) Advertisements for loans regulated under this article may not be false, misleading, or deceptive. No person whose activities are regulated under this article may advertise in any manner so as to indicate or imply that its interest rates or charges for loans are in any way "recommended," "approved," "set," or "established" by the state or this article;

(2) All advertisements disseminated in this state by a licensee or a registrant shall contain the name, license number, and an office address of such licensee or registrant, which shall conform to a name and address on record with the department; and

(3) No licensee shall advertise its services in Georgia in any media disseminated in this state, whether print or electronic, without the words

“Georgia Residential Mortgage Licensee” or, for those advertisers licensed in more than one state, a listing of Georgia as a state in which the advertiser is licensed. (Code 1981, § 7-1-1016, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 11; Ga. L. 2002, p. 1220, § 13.)

**The 2002 amendment**, effective July 1, 2002, deleted “primarily” following “disseminated” in paragraphs (2) and (3); inserted “, license number,” in paragraph (2); and added “or, for those advertisers licensed in more than one state, a listing of Georgia as a state in which the advertiser is licensed” at the end of paragraph (3).

**7-1-1017. Suspension or revocation of licenses; notice; judicial review; effect on preexisting contract.**

(a)(1) The department may suspend or revoke an original or renewal license or registration on any ground on which it might refuse to issue an original license or registration or for a violation of any provision of this article or of Chapter 6A of this title or any rule or regulation issued under this article or under Chapter 6A of this title, including failure to provide fees on a timely basis, or for failure of the licensee or registrant to pay, within 30 days after it becomes final, a judgment recovered in any court within this state by a claimant or creditor in an action arising out of the licensee’s or registrant’s business in this state as a mortgage lender or mortgage broker.

(2) Where an applicant or licensee has been found not in compliance with an order for child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action is sufficient grounds for refusal of a license or suspension of a license. In such actions, the hearing and appeal procedures provided for in those Code sections shall be the only such procedures required under this article. The department shall be permitted to share, without liability, information on its applications or other forms with appropriate state agencies to assist them in recovering child support when required by law.

(3) Where an applicant or licensee has been found to be a borrower in default as provided in Code Section 20-3-295, such action is sufficient grounds for refusal of a license or suspension of a license. In such actions, the hearing and appeal procedures provided for in Code Section 20-3-295 shall be the only such procedures required under this article.

(b) Notice of the department’s intention to enter an order denying an application for a license or registration under this article or of an order suspending or revoking a license or registration under this article shall be given to the applicant, licensee, or registrant in writing, sent by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant, licensee, or registrant. Within 20 days of the date of the notice of intention to enter an order of denial, suspension, or revocation under this article, the applicant, licensee, or registrant may



request in writing a hearing to contest the order. If a hearing is not requested in writing within 20 days of the date of such notice of intention, the department shall enter a final order regarding the denial, suspension, or revocation. Any final order of the department denying, suspending, or revoking a license or registration shall state the grounds upon which it is based and shall be effective on the date of issuance. A copy thereof shall be forwarded promptly by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant, licensee, or registrant.

(c) A licensee or registrant may, at the discretion of and with the consent of the department, agree to a voluntary suspension of its license or registration for a period of time to be agreed upon by the parties. Such order of suspension shall be considered a final order and shall be forwarded to the licensee or registrant in the same manner as any other final order. Grounds for such a voluntary suspension shall be the same as provided in subsection (a) of this Code section, and the licensee or registrant may waive its right to an administrative hearing before issuance of the suspension.

(d) A decision of the department denying a license or registration, original or renewal, shall be conclusive, except that it may be subject to judicial review under Code Section 7-1-90. A decision of the department suspending or revoking a license or registration shall be subject to judicial review in the same manner as a decision of the department to take possession of the assets and business of a bank under Code Section 7-1-155.

(e) Except as otherwise provided by law, a revocation, suspension, or surrender of a license or registration shall not impair or affect the obligation of a preexisting contract between the licensee and another person.

(f) Nothing in this article shall preclude a person whose license or registration has been suspended or revoked from continuing to service mortgage loans pursuant to servicing contracts in existence at the time of the suspension or revocation for a period not to exceed six months after the date of the final order of the department suspending or revoking the license or registration.

(g) Whenever a person subject to an order of the department fails to comply with the terms of such order which has been properly issued, the department upon notice of three days to such person may, through the Attorney General, petition the principal court for an order directing such person to obey the order of the department within the period of time fixed by the court. Upon the filing of such petition the court shall allow a motion to show cause why such motion should not be granted. Whenever, after a hearing upon the merits or after failure of such person to appear when ordered, it shall appear that the order of the department was properly

issued, the court shall grant the petition of the department. (Code 1981, § 7-1-1017, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 12; Ga. L. 1996, p. 453, § 2; Ga. L. 1997, p. 485, § 32; Ga. L. 1998, p. 795, § 31; Ga. L. 1998, p. 1094, § 4; Ga. L. 2000, p. 1589, § 3; Ga. L. 2003, p. 843, § 21.)

**The 2003 amendment**, effective July 1, 2003, in the middle of paragraph (a)(1), inserted “or of Chapter 6A of this title” and inserted “or under Chapter 6A of this title”; and added subsection (g).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1998, Ga. L. 1998, p. 795, § 31 and Ga. L. 1998, p. 1094, § 4, both amended this Code section. These amendments conflicted in the last sentence of paragraph (2) of subsection (a). This sentence was added in 1997 by Ga. L. 1997, p.

485, § 32. It was determined that the omission of the last sentence of paragraph (2) of subsection (a) by Ga. L. 1998, p. 1094, § 4 was inadvertent and thus the amendments were construed together to read as set out above.

**Editor's notes.** — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the 2000 amendment applied with respect to notices delivered on or after July 1, 2000.

### **7-1-1018. Cease and desist orders; enforcement procedure; civil penalty; fines.**

(a) Whenever it shall appear to the department that any person required to be licensed or registered or required to file a notification statement under this article or employed by a licensee or registrant pursuant to Code Section 7-1-1001 or who would be covered by the prohibitions in Code Section 7-1-1013 has violated any law of this state or any order or regulation of the department, the department may issue an initial written order requiring such person to cease and desist immediately from such unauthorized practices. Such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request within such 20 day period for a hearing. The hearing shall be conducted in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” A cease and desist order to an unlicensed person that orders them to cease doing a mortgage business without the appropriate license shall be final 30 days from the date of issuance, and there shall be no opportunity for an administrative hearing. If the proper license or evidence of exemption or valid employment status during the time of the alleged offense is delivered to the department within the 30 day period, the order shall be rescinded by the department. If a cease and desist order is issued to a person who has been sent a notice of bond cancellation and if the bond is reinstated or replaced and such documentation is delivered to the department within the 30 day period following the date of issuance of the order, the order shall be rescinded. If the notice of reinstatement of the bond is not received within the 30 days, the license shall expire at the end of the 30 day period and the person shall be required to make a new application for license and pay the applicable fees. In the case of an unlawful purchase of mortgage loans, such initial cease and desist order to

a purchaser shall constitute the knowledge required under subsection (b) of Code Section 7-1-1002 for any subsequent violations.

(b) Whenever a person required to be licensed under this article shall fail to comply with the terms of an order of the department which has been properly issued under the circumstances, the department, upon notice of three days to such person, may, through the Attorney General, petition the principal court for an order directing such person to obey the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition, the court shall allow a motion to show cause why it should not be granted. Whenever, after a hearing upon the merits or after failure of such person to appear when ordered, it shall appear that the order of the department was properly issued, the court shall grant the petition of the department.

(c) Any person required to be licensed under this article who violates the terms of any order issued pursuant to this Code section shall be liable for a civil penalty not to exceed \$1,000.00. Each day during which the violation continues shall constitute a separate offense. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with the order, the gravity of the violation, the history of previous violations by such person, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to imposition or has been imposed pursuant to this Code section. Any person assessed as provided in this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the licensee involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90.

(d) Initial judicial review of the decision of the department entered pursuant to this Code section or Code Section 7-1-1017 shall be available solely in the superior court of the county of domicile of the department.

(e) All penalties and fines recovered by the department as authorized by subsection (g) of this Code section shall be paid into the state treasury to the credit of the general fund; provided, however, that the department at its discretion may remit such amounts recovered, net of the cost of recovery, if it makes an accounting of all such costs and expenses of recovery in the same manner as prescribed for judgments received through derivative actions pursuant to the provisions of Code Section 7-1-441.

(f) For purposes of this Code section, the term "person" includes any officer, director, employee, agent, or other person participating in the conduct of the affairs of the person subject to the orders issued pursuant to this Code section.



(g) In addition to any other administrative penalties authorized by this article, the department may, by regulation, prescribe administrative fines for violations of this article and of any rules promulgated by the department pursuant to this article. (Code 1981, § 7-1-1018, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 13; Ga. L. 1995, p. 673, § 35; Ga. L. 1997, p. 485, § 33; Ga. L. 1999, p. 674, § 39; Ga. L. 2000, p. 174, § 33; Ga. L. 2001, p. 4, § 7; Ga. L. 2003, p. 843, § 22; Ga. L. 2004, p. 631, § 7.)

**The 2003 amendment**, effective July 1, 2003, in subsection (a), in the first sentence, deleted “any person” following “article or” and inserted “or who would be covered by the prohibitions in Code Section 7-1-1013”, substituted “during the time of the alleged offense is delivered to the department” for

“is obtained” in the fifth sentence, and added the sixth and seventh sentences.

**The 2004 amendment**, effective May 13, 2004, part of an Act to revise, modernize, and correct the Code, in subsection (a), in the seventh sentence, inserted “the” preceding “bond”.

### **7-1-1019. Criminal penalties.**

Any person and the several members, officers, directors, agents, and employees thereof who:

(1) Shall violate the provisions of subsection (a) of Code Section 7-1-1002, by the willful transaction of a mortgage business without a license or exemption, shall be guilty of a felony punishable as provided in Code Section 7-1-845; or

(2) Shall violate any of the other provisions of this article shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than one year or by a fine of not more than \$1,000.00, or by both fine and imprisonment. (Code 1981, § 7-1-1019, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 97, § 7; Ga. L. 1999, p. 674, § 40.)

### **7-1-1020. Construction.**

Nothing in this article limits any statutory or common law right of any person to bring any action in any court for any act involved in the mortgage business or the right of the state to punish any person for any violation of any law. Without limiting the generality of the foregoing, nothing in this article shall be construed as limiting in any manner the application of Part 2 of Article 15 of Chapter 1 of Title 10, the “Fair Business Practices Act of 1975.” (Code 1981, § 7-1-1020, enacted by Ga. L. 1993, p. 543, § 1.)

### **7-1-1021. Regulations governing lock-in and commitment agreements.**

The department may promulgate regulations governing the use and contents of lock-in agreements and commitment agreements. (Code 1981, § 7-1-1021, enacted by Ga. L. 1994, p. 570, § 14.)

## CHAPTER 2

## CREDIT UNION DEPOSIT INSURANCE CORPORATION

Sec.		Sec.	
7-2-1.	Incorporation procedures.	7-2-8.	Premiums and special assessments; distribution of assets on liquidation.
7-2-2.	Amendments to articles.		
7-2-3.	Adoption and amendment of by-laws.	7-2-9.	Insurance of deposits and shares.
7-2-4.	Powers.	7-2-10.	Conduct of business by incorporators and directors.
7-2-5.	Membership — Acquisition and termination.	7-2-11.	Exclusive supervision by department; rules and regulations.
7-2-6.	Membership — Financial institutions which are ineligible to be federally insured or which were chartered prior to July 1, 1981 [Repealed].	7-2-12.	Copies of members' reports sent to corporation; additional examinations or audits; ordering corrective action or revoking membership.
7-2-6.1.	Powers and privileges of members.	7-2-13.	Administrative review of corporation or department decision; exhaustion of remedies.
7-2-7.	Membership fees; refunds of fees, assessments, and premiums; distribution of undivided corporate earnings preceding voluntary cessation of business.	7-2-14.	Tax exemption.

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**Cross references.** — Credit unions generally, § 7-1-630 et seq.

**7-2-1. Incorporation procedures.**

(a) Within one year after July 1, 1974, the duly authorized representatives of not less than three credit unions chartered and existing under the laws of this state may petition the Secretary of State for incorporation of a nonprofit credit union deposit insurance corporation, hereinafter referred to as the "corporation." Such petition shall be accompanied by articles of incorporation in triplicate which shall include the following:

(1) The name of the proposed corporation, which shall include the words "deposit insurance corporation," and no corporation other than one incorporated pursuant to this chapter shall use the words in sequence "deposit insurance corporation";

(2) The location of its initial registered office;

(3) The purpose and nature of the business of the corporation, which shall be to aid and assist any member financial institution which is in liquidation or facing liquidation due to insolvency in order that the deposits and shares of any member shall be insured or guaranteed against loss in such amounts as may from time to time be established by the board of directors of the corporation pursuant to this chapter;

(4) Membership in the corporation, which shall be limited, except as otherwise expressly provided, to financial institutions, approved for membership by the directors of the corporation upon recommendation of the Department of Banking and Finance of this state, hereinafter referred to as the “department”; and

(5) The term of existence of the corporation, which shall be perpetual unless otherwise limited.

(b) Upon receipt of the articles, the Secretary of State shall forward one copy to the department.

(c) Before the articles are approved by the department, an appropriate investigation shall be made by the department for the purpose of determining:

(1) Whether the articles conform to this chapter;

(2) The general character and fitness of the petitioners;

(3) The economic advisability of establishing the proposed corporation; and

(4) Whether such corporation would cause undue harm to a corporation already existent under this chapter.

Upon approval of the articles in writing by the department, such written approval shall be delivered to the Secretary of State.

(d) Upon receipt of the approval of the department, the Secretary of State shall thereupon issue a certificate of incorporation to the petitioners. (Ga. L. 1974, p. 545, § 1; Ga. L. 1981, p. 1241, § 1; Ga. L. 1984, p. 952, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18A Am. Jur. 2d, Corporations, § 247.

**C.J.S.** — 18 C.J.S., Corporations, §§ 25-40.

#### 7-2-2. Amendments to articles.

Amendments to the articles of incorporation, adopted by a vote of two-thirds of the member financial institutions present at an annual meeting or a special meeting called for that purpose, shall be filed with the Secretary of State in the same manner as the original articles and shall become effective upon approval by the department and subsequent notification of the Secretary of State. (Ga. L. 1974, p. 545, § 2; Ga. L. 1984, p. 952, § 2.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18 Am. Jur. 2d, Corporations, §§ 92-95.

**C.J.S.** — 18 C.J.S., Corporations, § 38.



### 7-2-3. Adoption and amendment of bylaws.

(a) At its organizational meeting, the membership of the corporation shall adopt bylaws to govern the operations of the corporation. These bylaws shall be submitted to the department for approval and, if found to be consistent with this chapter, conducive to the purposes for which the corporation was formed, and equitable to all members, the bylaws shall be approved by the department.

(b) The original bylaws shall be adopted by and may thereafter be amended by a vote of at least a majority of the members present and voting at any regular meeting or special meeting called for such purpose. Bylaws may also be amended by the vote of at least two-thirds of the members of the board of directors of the corporation. Amendments adopted by the board may be rescinded at the next regular or special meeting of the members in the same manner as is provided for adoption of amendments by the members. (Ga. L. 1974, p. 545, § 3; Ga. L. 1989, p. 1690, § 1.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18A Am. Jur. 2d, Corporations, §§ 314-317, 327, 328.

**C.J.S.** — 18 C.J.S., Corporations, §§ 111-119.

### 7-2-4. Powers.

The corporation may:

- (1) Enter into contracts, including contracts for reinsurance;
- (2) Sue and be sued;
- (3) Adopt, use, and display a corporate seal;
- (4) Advance funds, in accordance with agreed terms and conditions, to aid member financial institutions to operate and to meet liquidity requirements;
- (5) Assume control of the property and business of any member financial institution upon the written direction of the department and operate the financial institution in accordance with the recommendations of the department;
- (6) Assist in the merger, consolidation, or liquidation of member financial institutions;
- (7) Receive money or other property from its member financial institutions or from any corporation, association, or person;

- (8) Invest its funds in such manner as permitted to credit unions under the laws of this state and in such other manner as may be approved by the department;
- (9) Borrow money from any source upon such terms and conditions as the board of directors may determine;
- (10) Purchase in its own name, hold, and convey property of any nature necessary for the convenient transaction of its business;
- (11) Receive by assignment or purchase from its members any property of any nature owned by those members;
- (12) Sell, assign, mortgage, encumber, or transfer property of any nature;
- (13) Declare and pay dividends on membership fees with the approval of the department; and
- (14) Adopt and amend bylaws, rules, and regulations carrying out the purposes of the corporation. (Ga. L. 1974, p. 545, § 4; Ga. L. 1984, p. 952, § 3.)

JUDICIAL DECISIONS

**Cited in** Kilpatrick Marine Piling v. Fireman’s Fund Ins. Co., 795 F.2d 940 (11th Cir. 1986).

OPINIONS OF THE ATTORNEY GENERAL

**Scope of power to assist in liquidation of member.** — The power of a credit union deposit insurance corporation to assist in liquidation of member credit union, while otherwise general, does not extend to actions which are inconsistent with its primary purpose, protection of deposits and shares of credit union members. 1977 Op. Att’y Gen. No. 77-7.

**Preferring unsecured creditor violates § 7-1-202(a).** — A credit union deposit in-

surance corporation, acting as receiver or deputy receiver of a member credit union, cannot purchase an unsecured note with assets of credit union since such purchase would give an unsecured creditor priority over depositors and other more senior claimants, in violation of former Code 1933, § 41A-813 (see O.C.G.A. § 7-1-202(a)). 1977 Op. Att’y Gen. No. 77-7.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 18B Am. Jur. 2d, Corporations, §§ 1990-2008, 2085.

**C.J.S.** — 19 C.J.S., Corporations, § 554 et seq.

7-2-5. Membership — Acquisition and termination.

(a) Any financial institution, as defined in Code Section 7-1-4 or chartered under the laws of the United States or of any state or territory of the United States, may become a member of the corporation upon application

by its directors, recommendation of the department, and approval of the directors of the corporation.

(b) Before making its recommendation, the department shall consider:

(1) The history, financial condition, and management policies of the applicant;

(2) The economic advisability of insuring the applicant without undue risk to the fund;

(3) The general character and fitness of the applicant's management; and

(4) The convenience and needs of the members to be served by the applicant.

(c) Membership in the corporation may be terminated upon 30 days' written notice to the corporation and after providing evidence satisfactory to the department that alternate, comparable insurance of deposits has been obtained by the financial institution. Upon termination of membership, the financial institution shall be entitled to the refunds set forth in subsection (d) of Code Section 7-2-7. (Ga. L. 1974, p. 545, § 5; Ga. L. 1984, p. 952, § 4.)

**7-2-6. Membership — Financial institutions which are ineligible to be federally insured or which were chartered prior to July 1, 1981.**

Reserved. Repealed by Ga. L. 1993, p. 917, § 10, effective April 13, 1993.

**Editor's notes.** — This Code section was 1981, p. 1241, § 3; and Ga. L. 1981, Ex. Sess., based on Ga. L. 1974, p. 545, § 1; Ga. L. p. 8.

**7-2-6.1. Powers and privileges of members.**

Any financial institution insured by the corporation shall have the same powers and privileges as any other state-chartered financial institution of the same class even though such other financial institution is insured under some other state or federal program. Such equality of powers shall not relieve the financial institution, whether insured under this chapter or under an alternative state or federal program, from taking appropriate action to amend its articles of incorporation or bylaws or from obtaining appropriate regulatory approvals before exercising such powers and privileges. (Ga. L. 1981, p. 1241, § 4.)

**7-2-7. Membership fees; refunds of fees, assessments, and premiums; distribution of undivided corporate earnings preceding voluntary cessation of business.**

(a) Each financial institution accepted for membership shall be required to pay a membership fee of 1 percent of the deposits and shares of the



financial institution up to \$1 million, plus one-half of 1 percent of the deposits and shares from \$1 million to \$5 million, plus one-fourth of 1 percent of the deposits and shares over \$5 million. Payment of the membership fee may be made in three equal installments, the first installment being due upon the approval of the application of the member financial institution and being in an amount of not less than \$10.00 and the remaining two installments being due annually thereafter in amounts of not less than \$10.00 each year.

(b) The membership fee shall be maintained on an annual basis in the same ratio to deposits and shares as the original membership fee bore to the total of deposits and shares at the time the financial institution initially joined the corporation. Such annual adjustments to the membership fee shall be paid or refunded concurrently with the payment of the annual insurance premium and shall be calculated upon the same deposit and share base as is used in the calculation of the annual premium. The board of directors of the corporation with the approval of the department may authorize a different membership fee structure from that set forth in this Code section.

(c) Membership fees, when paid by the individual member financial institution, may be charged to its regular reserve account or undivided earnings or may be established as an asset or charged in such other manner as may be approved by the department.

(d) The membership fee of each member financial institution may be refunded in whole or in part to the extent that the unencumbered funds of the corporation exceed 2 percent of the aggregate total deposits and shares of the member financial institutions as determined by the most recent call report of condition submitted to the department. Special assessments levied pursuant to subsection (b) of Code Section 7-2-8 may be repaid in such manner as may be approved by the directors of the corporation with approval by the department. Refunds may be paid only to members of the corporation at the time of declaration by the directors of the corporation in proportion to their paid-in membership fees.

(e) Upon termination or revocation of membership, other than through involuntary liquidation, the financial institution shall be entitled to refunds as follows:

(1) Membership fees in full within 30 days;

(2) Pro rata portion of annual premium which is unearned by the corporation in full within 30 days; and

(3) Any special assessment in accordance with its terms, provided the department may direct that such refunds be disbursed over a period of not more than 24 months at the request of the corporation where such disbursement will not cause an undue financial burden for the member financial institution.

(f) Any financial institution which terminates its membership voluntarily within the 24 months immediately preceding any voluntary cessation of business by the corporation shall be entitled to a pro rata distribution of the undivided earnings of the corporation. Such distribution shall be the lesser of an amount equal to that portion of the retained earnings at the end of the fiscal year immediately preceding the termination of membership determined by the proportion of the terminating members' membership fees to the total membership fees at the end of such fiscal year or the amount which would have been distributed had membership been retained until the final distribution. (Ga. L. 1974, p. 545, § 6; Ga. L. 1981, p. 1241, § 2; Ga. L. 1984, p. 952, § 5; Ga. L. 1989, p. 1690, § 2.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1985, "of" was substituted for "or" following "revocation" in subsection (e).

#### **7-2-8. Premiums and special assessments; distribution of assets on liquidation.**

(a) A regular annual premium, not to exceed one-twelfth of 1 percent of the deposits and shares of the member financial institution, shall be levied by the directors of the corporation. Such premium may be raised, lowered, waived, or refunded, in whole or in part, with prior approval by the department, in the event that the total funds held by the corporation justify or require such change. The corporation may charge its financial institutions variable rate premiums based upon determination of risk to the fund, provided that such risk rating is made according to formulas adopted by the directors of the corporation and approved by the department.

(b) In the event of potential impairment of the corporation's funds, special assessments may be levied by the directors of the corporation with the prior approval of the department, provided that such special assessments shall not exceed, in the aggregate, 1 percent of the deposits and shares of each member financial institution. Such special assessments shall be in the form of loans from the member financial institution to the corporation.

(c) Membership fees, annual premiums, and special assessments shall be based upon deposits and shares of member financial institutions as reported to the department in its most recent call report of condition and shall be payable within 30 days of the date on which the corporation notifies its members of any such premium or assessment.

(d) Annual premiums paid under this Code section shall be charged to the operating expenses of each member financial institution.

(e) In the event of liquidation of the corporation, all assets remaining after the payment or provision for payment of all debts and taxes and expenses of liquidation, including distributions to former members as

provided for in Code Section 7-2-7, shall be distributed to the then existing member financial institutions in proportion to their membership fees paid into the corporation. (Ga. L. 1974, p. 545, § 7; Ga. L. 1984, p. 952, § 6; Ga. L. 1989, p. 1690, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 19 Am. Jur. 2d, Corporations, § 2873. C.J.S. — 19 C.J.S., Corporations, §§ 861-878.

7-2-9. Insurance of deposits and shares.

(a) Upon receipt of the first installment of the prescribed membership fee from the financial institutions which have agreed to become members of the corporation as provided in this chapter, the corporation may commence its insurance of the deposits and shares of the member financial institutions.

(b) Each insured financial institution may advise its members and advertise that its deposits and shares are insured by the corporation, in such manner established by the directors of the corporation and approved by the department, upon receipt of a notification from the corporation that it has been accepted for membership in the corporation by its directors and upon payment of any required premiums or fees.

(c) The amount of insurance coverage on deposits and shares provided by the corporation may be increased from time to time by the directors of the corporation with the approval of the department; provided, however, that in no event may the insurance be increased to an amount greater than the largest amount insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(d) The corporation may insure or partially insure the uninsured shares and deposits of any financial institution primarily insured by it or some other governmental or private insurance program, at a cost to be determined by the directors of the corporation with the approval of the department, provided the department approves the financial institution for such coverage. Financial institutions having excess deposit insurance coverage shall not be required to be members of the corporation by virtue of such insurance coverage.

(e) No other forms of insurance except that authorized by this Code section may be sold or offered by the corporation. (Ga. L. 1974, p. 545, § 8; Ga. L. 1984, p. 952, § 7; Ga. L. 1985, p. 149, § 7; Ga. L. 1993, p. 917, § 11.)

7-2-10. Conduct of business by incorporators and directors.

The corporation's business shall be conducted by the incorporators, who shall serve until the organizational meeting of the corporation, at which



time not less than three directors shall be elected by the members of the corporation in accordance with the bylaws. Thereafter, the corporation's business shall be conducted by the directors. (Ga. L. 1974, p. 545, § 9.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 18B Am. Jur. 2d, Corporations, §§ 1345, 1483-1486.

**C.J.S.** — 19 C.J.S., Corporations, §§ 460-474.

#### **7-2-11. Exclusive supervision by department; rules and regulations.**

(a) The corporation shall not be deemed an insurance company within the meaning of the laws of the State of Georgia relating to insurance or providing for the supervision of insurance companies, but it shall be subject to the exclusive supervision of the department. The department shall exercise the same powers and authority over the corporation as is now or hereafter exercised over banks, credit unions, and building and loan associations under its jurisdiction and shall issue such rules and regulations as shall be necessary to carry out its responsibilities under this chapter.

(b) Any other company which is engaged in the insurance of deposits in financial institutions in this state when approved by the department based upon the criteria set forth in subsection (c) of Code Section 7-2-1 shall be subject to the jurisdiction of the department to the extent of its deposit insurance activities and to the same extent as a corporation organized pursuant to this chapter. Nothing contained in this chapter shall amend, modify, or otherwise restrict any authority or jurisdiction possessed by the Commissioner of Insurance prior to July 1, 1984. In the event a conflict exists between this chapter and Title 33, known as the "Georgia Insurance Code," Title 33 shall control. (Ga. L. 1974, p. 545, § 10; Ga. L. 1984, p. 952, § 8; Ga. L. 1985, p. 149, § 7.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 10 Am. Jur. 2d, Banks and Financial Institutions, § 21 et seq.

**C.J.S.** — 9 C.J.S., Banks and Banking, § 7.

#### **7-2-12. Copies of members' reports sent to corporation; additional examinations or audits; ordering corrective action or revoking membership.**

(a) The department shall forward to the corporation copies or summaries of all examination reports of member financial institutions. In the event a summary is provided, the corporation may request a complete and full report.

(b) The corporation may request the department to conduct additional examinations or to order independent audits of the records of member financial institutions. The department shall cooperate with the corporation

upon such a request but shall use its discretion in determining the scope and timing of such additional examinations or audits.

(c) If the directors of the corporation ascertain evidence of carelessness, unsound practices, or mismanagement of any member financial institution which appears to affect adversely the solvency of the financial institution or threatens undue loss to the corporation, the directors may order that corrective action be taken or revoke the membership of the financial institution in the corporation or recommend to the department that the financial institution be liquidated. The department shall be provided a copy of any such order or letter of revocation. In the event of revocation of its membership, the financial institution shall notify all of its members of such revocation and that the deposits and shares are no longer insured by the corporation, provided that, in the event membership is revoked, insurance coverage shall continue in effect for 180 days. No refund required by subsection (e) of Code Section 7-2-7 shall be payable until after insurance coverage is terminated.

(d) If any member financial institution shall fail to pay any assessment, premium, or membership fee lawfully required under this chapter, the directors of the corporation shall notify the department, and the department shall forthwith notify the financial institution in writing. The failure of such financial institution to make such payment within 15 days after the said written notice may subject the financial institution to the sanctions set forth in subsection (c) of this Code section. (Ga. L. 1974, p. 545, § 11; Ga. L. 1984, p. 952, § 9.)

### **7-2-13. Administrative review of corporation or department decision; exhaustion of remedies.**

(a) If a financial institution is aggrieved by a decision or order of the corporation or if the corporation is aggrieved by a decision or order of the department, the financial institution or the corporation, as the case may be, shall, upon appropriate petition and after due notice, be entitled to a hearing and administrative review of the action before the department, which may stay enforcement of such actions pending the administrative review.

(b) Judicial review of such decisions or orders, other than decisions or orders to revoke the membership of a financial institution, shall not be available unless the aggrieved party has sought administrative review under this Code section. (Ga. L. 1974, p. 545, § 12; Ga. L. 1984, p. 952, § 10.)

### **7-2-14. Tax exemption.**

The corporation shall be exempt from all state and local taxes except real property taxes. (Ga. L. 1974, p. 545, § 13.)

## CHAPTER 3

## INDUSTRIAL LOANS

Sec.		Sec.	
7-3-1.	Short title.	7-3-18.	Delivery of copy of contract or itemized statement; receipts.
7-3-2.	Purpose of chapter.	7-3-19.	Tax on interest — Levy; penalty for tax to charges.
7-3-3.	Definitions.	7-3-20.	Tax on interest — Payment; inspection of records; rules and regulations.
7-3-4.	Applicability of chapter — Generally; effect on existing lenders.	7-3-21.	Tax on interest — Penalties for late or fraudulent tax payments.
7-3-5.	Applicability of chapter — Transactions by which money is paid others.	7-3-22.	Examinations, investigations, and hearings.
7-3-6.	Exemptions from chapter.	7-3-23.	Cease and desist orders; enjoining violations.
7-3-7.	Industrial Loan Commissioner; powers and duties generally; employees; deputy; training programs for licensees.	7-3-24.	Suspension or revocation of license — Grounds; procedure; effect of loss of license on contracts.
7-3-8.	License required; application; fees.	7-3-25.	Suspension or revocation of license — Unreasonable collection tactics.
7-3-9.	Investigation of application; issuance or denial of license; purchase of licensed location.	7-3-26.	Probation and civil penalties for violations.
7-3-10.	License required for each location; display; duration; annual fee; moving office within county.	7-3-27.	Judicial review of Commissioner's decisions.
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7-3-12.	Books, records, and reports.	7-3-29.	Criminal penalties; void loans; civil penalty to borrower for violation; violation not subject of class action; defense of good faith; limitation on remedies for voidness.
7-3-13.	False advertising prohibited.		
7-3-14.	Maximum loan amount, period, and charges.		
7-3-15.	Limitation on further charges.		
7-3-16.	Loans to pay contracts acquired by licensee restricted.		
7-3-17.	Payment before maturity; refund of prepaid interest; continuing insurance.		

**Cross references.** — Exemption from securities-registration provisions of securities issued or guaranteed by industrial loan associations, § 10-5-8. Payday loans are illegal, § 16-17-1 et seq.

**Administrative rules and regulations.** — Rules governing industrial loan department, Official Compilation of Rules and Regulations of State of Georgia, Rules of Comptroller General, Industrial Loan Department, Chapters 120-1-1 through 120-1-15.

**Law reviews.** — For article, "Small Loans

Under Georgia Laws," see 3 Mercer L. Rev. 227 (1952). For article, "The Georgia Industrial Loan Act: An Analysis," see 7 Mercer L. Rev. 297 (1956). For article discussing the Industrial Loan Act with emphasis on defending the debtor from claims, see 24 Mercer L. Rev. 545 (1973). For article surveying 1976 to 1977 developments in application of the Industrial Loan Act, see 29 Mercer L. Rev. 41 (1977). For article surveying Georgia cases dealing with commercial law from June 1977 through May 1978, see 30 Mercer L.



Rev. 15 (1978). For article discussing methods of computation of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978).

For note discussing transfer fees in home loan assumptions in reference to the Georgia usury laws, see 9 Ga. L. Rev. 454 (1975). For note discussing significant judicial, legislative, and administrative developments under the Industrial Loan Act between 1973

and 1978, see 27 Emory L.J. 109 (1978). For note discussing debtor-creditor relations under the Georgia Industrial Loan Act, see 12 Ga. L. Rev. 814 (1978).

For comment on *Lewis v. Termplan, Inc.*, 124 Ga. App. 507, 184 S.E.2d 473 (1971), see 9 Ga. St. B.J. 380 (1973). For comment on *Georgia Inv. Co. v. Norman*, 231 Ga. 821, 204 S.E.2d 740 (1974), see 26 Mercer L. Rev. 321 (1974).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION LICENSE REQUIREMENT APPLICATION

#### General Consideration

**Purpose of the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.)** is to eliminate abuses arising from unregulated entities engaging in small loan business. *Commercial Credit Plan, Inc. v. Parker*, 152 Ga. App. 409, 263 S.E.2d 220 (1979).

Purpose of the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.) is to provide a source of regulated lending funds since such need existed for those who had been borrowing at usurious rates from loan sharks, street shylocks and wage-buyers. *Freeman v. Decatur Loan & Fin. Corp.*, 140 Ga. App. 682, 231 S.E.2d 409 (1976).

**The Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.)** was designed to require creditors to make certain uniform disclosures in consumer credit transactions in order to assure a meaningful disclosure of credit terms so that consumers will be able to compare more readily the various credit terms available to them and avoid uninformed use of credit. *Grubb v. Oliver Enters., Inc.*, 358 F. Supp. 970 (N.D. Ga. 1972).

**Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., must be strictly construed.** *General Fin. Corp. v. Sprouse*, 577 F.2d 989 (5th Cir. 1978).

The Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., is in derogation of common law and must be strictly construed. *Diggs v. Swift Loan & Fin. Co.*, 154 Ga. App. 389, 268 S.E.2d 433 (1980).

**Chapter to be read liberally and broadly.** — Wording and legislative history of the

Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.) make clear that it is to be read liberally and broadly to prevent even the most subtle or indirect methods of assessing usurious rates. *Williams v. Public Fin. Corp.*, 598 F.2d 349 (5th Cir. 1979).

**The Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.)** makes certain financial transactions legal which would otherwise be usurious under former Code 1933, § 57-101 (see O.C.G.A. § 7-4-2). *Lewis v. Termplan, Inc.*, 124 Ga. App. 507, 184 S.E.2d 473 (1971).

**Chapter operates uniformly and in same manner as usury statute.** — The Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.) operates generally upon entire class of subjects with which it deals, uniformly throughout state and in same manner generally as the usury statute. *Talley v. Sun Fin. Co.*, 223 Ga. 419, 156 S.E.2d 55 (1967).

**Chapter prevails over Uniform Commercial Code.** — Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., is applicable to security agreements and in the event its provisions conflict with the Georgia Uniform Commercial Code, the Industrial Loan Act governs. *General Fin. Corp. v. Sprouse*, 577 F.2d 989 (5th Cir. 1978).

**Effect of § 7-3-29 on judicial and other interpretations of this chapter.** — O.C.G.A. 7-3-29 evidences a recognition on the part of the General Assembly that O.C.G.A. Ch. 3, T. 7 is ambiguous in certain sections. It in no way discourages judicial or other valid authority from seeking interpretations of the chapter which further its purpose, despite

**General Consideration (Cont'd)**

prior inconsistent interpretations. *Ford v. Termplan, Inc.*, 528 F. Supp. 1016 (N.D. Ga. 1981).

**Judicial construction of the Retail Installment and Home Solicitation Sales Act**, O.C.G.A. Art. 1, Ch. 1, T. 10, enacted at a different time, is weak evidence of legislative intent in enacting O.C.G.A. Ch. 3, T. 7. *Ford v. Termplan, Inc.*, 528 F. Supp. 1016 (N.D. Ga. 1981).

**Retail Installment and Home Solicitation Act, Art. 1, Ch. 1, T. 10 and O.C.G.A. Ch. 3, T. 7 differ in purpose** and effect and provisions of one act are not controlling in interpretation of the other. *Liberty Loan Corp. v. Childs*, 140 Ga. App. 473, 231 S.E.2d 352 (1976), cert. dismissed, 239 Ga. 220, 236 S.E.2d 373 (1977).

**Action under Truth-in-Lending Act does not affect attack under this chapter.** — Statutory damages sought by defendants in federal court as a violation of Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., is a legal tort action authorized by federal law; and it is in no wise an estoppel of defendants to contend the loan contract was void under O.C.G.A. Ch. 3, T. 7. *Hobbiest Financing Corp. v. Spivey*, 135 Ga. App. 353, 217 S.E.2d 613 (1975).

**Truth-in-Lending Act inapplicable to loans violating this chapter.** — The federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., does apply to loans which also violate O.C.G.A. Ch. 3, T. 7. *Williams v. Public Fin. Corp.*, 598 F.2d 349 (5th Cir. 1979).

**Violation of chapter as affirmative defense.** — Party asserting defense of violation of O.C.G.A. Ch. 3, T. 7 has burden of showing that defense affirmatively by record. *Grier v. Employees Fin. Servs.*, 158 Ga. App. 813, 282 S.E.2d 342 (1981).

**Rule of 78's can be used to compute interest rebates.** — O.C.G.A. Ch. 3, T. 7 authorizes the lender to use the Rule of 78's to compute interest rebates in refinancing cases and does not require lenders to compute such rebates on a pro rata basis. *Varner v. Century Fin. Corp.*, 253 Ga. 27, 317 S.E.2d 178 (1984).

**Loans which had undergone refinancing** were not void under O.C.G.A. Ch. 3, T. 7 merely because the prepaid interest attributable to the original loans was rebated under

the terms of those agreements according to the Rule of 78's, instead of by a pro rata method. *Varner v. Century Fin. Co.*, 738 F.2d 1143 (11th Cir. 1984).

**Penalty for omission in original agreement.** — A 1979 debt was not uncollectible because the original 1977 agreement violated O.C.G.A. Ch. 3, T. 7 by failing to provide for rebates of unearned credit insurance premiums. However, as a penalty for this violation, the loan company had to forfeit all interest and charges accrued in connection with the 1977 agreement. *Varner v. Century Fin. Co.*, 738 F.2d 1143 (11th Cir. 1984).

**Clause rendering entire balance due upon default is void.** — Contract clause that renders entire unpaid balance due and payable upon default of payment is void and unenforceable as providing for acceleration of unearned interest. *Blazer Fin. Servs. v. Dukes*, 141 Ga. App. 663, 234 S.E.2d 149 (1977).

**Effect of accelerating debt on insurance coverage.** — In the absence of any requirement that a lender cancel credit insurance coverage upon acceleration of a debt, there is no violation of this chapter when a lender, pursuant to properly drafted loan documents and in accord with this chapter, accelerates a debt but does not refund insurance premiums on insurance coverage still in effect. *Williams v. Charter Credit Co.*, 179 Ga. App. 721, 347 S.E.2d 635 (1986).

**Cited in** *Haire v. Allied Fin. Co.*, 99 Ga. App. 649, 109 S.E.2d 291 (1959); *Liberty Loan Corp. v. Crowder*, 116 Ga. App. 280, 157 S.E.2d 52 (1967); *Camilla Loan Co. v. Sheffield*, 116 Ga. App. 626, 158 S.E.2d 698 (1967); *Reynolds v. Service Loan & Fin. Co.*, 116 Ga. App. 740, 158 S.E.2d 309 (1967); *Gentry v. Consol. Credit Corp.*, 124 Ga. App. 597, 184 S.E.2d 692 (1971); *Mason v. Service Loan & Fin. Co.*, 128 Ga. App. 828, 198 S.E.2d 391 (1973); *Roberts v. Allied Fin. Co.*, 129 Ga. App. 10, 198 S.E.2d 416 (1973); *Lee v. G.A.C. Fin. Corp.*, 130 Ga. App. 44, 202 S.E.2d 221 (1973); *Hinsley v. Liberty Loan Corp.*, 133 Ga. App. 344, 211 S.E.2d 3 (1974); *Hodges v. Community Loan & Inv. Corp.*, 234 Ga. 427, 216 S.E.2d 274 (1975); *Harris v. Avco Fin. Corp.*, 135 Ga. App. 267, 218 S.E.2d 83 (1975); *Earwood v. Liberty Loan Corp.*, 136 Ga. App. 799, 222 S.E.2d 204 (1975); *Mays v. Safeway Fin. Co.*, 139 Ga.

App. 229, 228 S.E.2d 319 (1976); Perry v. Landmark Fin. Corp., 141 Ga. App. 62, 232 S.E.2d 399 (1977); Aycock v. HFC, 142 Ga. App. 207, 235 S.E.2d 578 (1977); Clark v. Transouth Fin. Corp., 142 Ga. App. 389, 236 S.E.2d 135 (1977); Bramblett v. Whitfield Fin. Co., 143 Ga. App. 853, 240 S.E.2d 230 (1977); Cooper v. Public Fin. Corp., 144 Ga. App. 572, 241 S.E.2d 839 (1978); Lowe v. Termplan, Inc., 144 Ga. App. 671, 242 S.E.2d 268 (1978); Hilley v. Finance Am. Corp., 145 Ga. App. 284, 243 S.E.2d 587 (1978); Lee v. Beneficial Fin. Co., 159 Ga. App. 205, 282 S.E.2d 770 (1981); Ricks v. Liberty Loan Corp., 146 Ga. App. 594, 247 S.E.2d 133 (1978); Carter v. Swift Loan & Fin. of Columbus, Inc., 148 Ga. App. 358, 251 S.E.2d 379 (1978); Motor Fin. Co. v. Harris, 150 Ga. App. 762, 258 S.E.2d 628 (1979); Finance Am. Corp. v. Drake, 151 Ga. App. 383, 259 S.E.2d 739 (1979); Cody v. Community Loan Corp., 606 F.2d 499 (5th Cir. 1979); Sanders v. Liberty Loan Corp., 153 Ga. App. 859, 267 S.E.2d 286 (1980); Gainesville Fin. Servs., Inc. v. McDougal, 154 Ga. App. 820, 270 S.E.2d 40 (1980); Sanders v. Liberty Loan Corp., 246 Ga. 292, 271 S.E.2d 218 (1980); Southern Dist. Co. v. Ector, 155 Ga. App. 521, 271 S.E.2d 661 (1980); Wimbush v. Fayette Fin. Co., 156 Ga. App. 500, 275 S.E.2d 99 (1980); Sanders v. Liberty Loan Corp., 156 Ga. App. 628, 276 S.E.2d 49 (1980); Williams v. Public Fin. Corp., 609 F.2d 1179 (5th Cir. 1980); Friend v. Aetna Fin. Co., 622 F.2d 1217 (5th Cir. 1980); Whitfield v. Termplan, Inc., 651 F.2d 383 (5th Cir. 1981); In re Moses, 9 Bankr. 370 (Bankr. N.D. Ga. 1981); Smith v. American Fin. Sys., 14 Bankr. 712 (Bankr. N.D. Ga. 1981); Clyde v. Liberty Loan Corp., 249 Ga. 78, 287 S.E.2d 551 (1982); Gibbs v. Jack Daniel Auto Sales, Inc., 163 Ga. App. 479, 294 S.E.2d 696 (1982); Varner v. Century Fin. Co., 720 F.2d 1228 (11th Cir. 1983); Scott v. Aetna Fin. Co., 201 Ga. App. 81, 410 S.E.2d 203 (1991).

### License Requirement

**License is condition precedent to recovery upon obligation incurred under chapter.** — As a condition precedent to recovery upon an obligation incurred under provisions of the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.) it must appear that the obligee was licensed under that Act to

engage in business of making loans, etc., thereunder. Bayne v. Sun Fin. Co. No. 1, 114 Ga. App. 27, 150 S.E.2d 311 (1966); Southern Dist. Co. v. Cooper, 130 Ga. App. 223, 203 S.E.2d 237 (1973).

It is a condition precedent to recovery on a note otherwise usurious that obligee named therein was at time of execution of note duly licensed under provisions of the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.). Hardy v. R & S Fin. Co., 116 Ga. App. 451, 157 S.E.2d 777 (1967).

There can be no recovery upon obligation incurred under the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.) without proof that obligee in note sued upon was duly licensed at time obligation was incurred. HFC v. Johnson, 119 Ga. App. 49, 165 S.E.2d 864 (1969); Scoggins v. Whitfield Fin. Co., 242 Ga. 416, 249 S.E.2d 222 (1978).

It is settled that one who seeks to recover money loaned under provisions of Industrial Loan Act, O.C.G.A. § 7-3-1, must plead and prove that the person was licensed to do business under the act at time loan was made. Service Loan & Fin. Corp. v. McDaniel, 115 Ga. App. 548, 154 S.E.2d 823 (1967).

It must appear from allegations of petition that payee in note representing transaction under the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.) was duly licensed to operate thereunder when obligation was incurred, i.e., when note was executed. This is required in order to show that plaintiff sues upon a lawful obligation. Bayne v. Sun Fin. Co. No. 1, 114 Ga. App. 27, 150 S.E.2d 311 (1966).

**Failure to plead fact of licensing is an amendable defect.** Service Loan & Fin. Corp. v. McDaniel, 115 Ga. App. 548, 154 S.E.2d 823 (1967).

### Application

**Question is whether contract could be used to exact illegal charges.** — The Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.) was designed to protect debtors who are often unaware of their legal rights or complicated rules of construction. The relevant question is not simply whether a violation exists in the contract, when evaluated under general rules of contract construction, but whether the lender might be able to employ certain provisions of the contract



**Application (Cont'd)**

to exact illegal charges from unsuspecting debtors. *General Fin. Corp. v. Sprouse*, 577 F.2d 989 (5th Cir. 1978).

**Where plaintiff contracted for collection of unearned interest, which violates the obligation is void.** *Guyton v. Martin Fin. Corp.*, 135 Ga. App. 62, 217 S.E.2d 390 (1975).

**Where loan is void, lender forfeits principal, interest, and other charges.** — Lender forfeits not only interest and other charges, but forfeits principal as well where loan is found to be null and void under the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.). *Hobbiest Fin. Corp. v. Spivey*, 135 Ga. App. 353, 217 S.E.2d 613 (1975).

**Action for money had and received not sustainable** where predicated upon contract void under Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.). *Anderson v. G.A.C. Fin. Corp.*, 135 Ga. App. 116, 217 S.E.2d 605 (1975).

**Reaffirmance of obligation void under the Georgia Industrial Loan Act** (see O.C.G.A. § 7-3-1 et seq.) is also void. *Pinkett v. Credithrift of Am., Inc.*, 430 F. Supp. 113 (N.D. Ga. 1977).

**A lender cannot recover money lent on refinancing of loan which violates the Georgia Industrial Loan Act** (see O.C.G.A. § 7-3-1 et seq.). *Williams v. Public Fin. Corp.*, 598 F.2d 349 (5th Cir. 1979).

**Plaintiff must show chapter applicable.** —

Plaintiff lender bears burden of establishing that plaintiff comes within terms of the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.). *Gray v. Quality Fin. Co.*, 130 Ga. App. 762, 204 S.E.2d 483 (1974).

**Administrative interpretation of chapter is entitled to consideration by court.** — Administrative interpretation of this chapter given by Georgia Industrial Loan Commissioner is entitled to consideration in determination by court of manner in which fees and charges allowed by law should be calculated. *Belton v. Columbus Fin. & Thrift Co.*, 127 Ga. App. 770, 195 S.E.2d 195 (1972); *FinanceAmerica Corp. v. Drake*, 154 Ga. App. 811, 270 S.E.2d 449 (1980).

**Administrative rulings will be adopted when they conform to meaning which court deems proper.** *Belton v. Columbus Fin. & Thrift Co.*, 127 Ga. App. 770, 195 S.E.2d 195 (1972).

**Remedy same for illegal loans and loans based on illegal consideration.** — Under Georgia law, public policy dictates that loans based partly on illegal consideration are void and money paid pursuant to such contracts need not be repaid, and since this is the same remedy as provided in this chapter for loans which violate it, the distinction between illegal loans and loans based in part on illegal consideration is of no importance. *Williams v. Public Fin. Corp.*, 598 F.2d 349 (5th Cir. 1979).

**OPINIONS OF THE ATTORNEY GENERAL**

**One who lends money on wages and salaries is subject to provisions of the Georgia Industrial Loan Act** (see O.C.G.A. § 7-3-1 et seq.). 1954-56 Op. Att'y Gen. p. 385.

**Lenders not subject to license requirement.** — A person not engaged in business of making loans, but who makes occasional loans in amounts less than \$2,500.00 (now \$3,000.00) repayable in monthly, quarterly or annual installments, may charge interest at 6 percent (now 8 percent) per annum for entire period of loan and take security therefor, and is not required to obtain a license under this chapter. 1954-56 Op. Att'y Gen. p. 392.

**Federal savings and loan associations are exempt from chapter.** — Consumer loans

for amounts less than \$3,000.00, with interest charged in excess of 9 percent simple interest, are governed by this chapter, but this chapter grants specific exemptions from its provisions to "banks, trust companies, real estate loan or mortgage companies, federal and Georgia building and loan associations" under former Code 1933, §§ 25-221 and 25-318 (see O.C.G.A. § 7-3-6). Although federal savings and loan associations are not specifically named as such, they are included in the list of exemptions under that section, and therefore, wholly owned subsidiaries of federal savings and loan associations, created pursuant to federal statute and regulation, are not required to obtain a license under this chapter

in order to make loans of less than \$3,000.00 at interest rates permitted by Georgia usury statutes. 1978 Op. Att'y Gen. No. 78-12.

**Unauthorized transactions.** — The Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., and the rules and regulations promulgated thereunder do not allow Industrial Loan Act licensees to transact noncredit insurance through employees or otherwise. 1984 Op. Att'y Gen. No. 84-60.

**Former Code 1933, §§ 25-211 and 25-310 (see O.C.G.A. § 7-3-22) empowers commissioner to investigate loans and business of**

**any person violating the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.).** 1948-49 Op. Att'y Gen. p. 15.

**Industrial loan licensed employee may conduct the business of insurance** provided that the person is duly licensed as an insurance agent and provided that the customer is not misled into thinking that the customer's ability to procure a loan is contingent upon the customer's agreement to purchase this insurance or otherwise to transact business in the industrial loan office. 1984 Op. Att'y Gen. No. U84-54.

#### RESEARCH REFERENCES

**ALR.** — Constitutionality of statutes regulating the business of making small loans, 69 ALR 581; 125 ALR 743; 149 ALR 1424.

Construction and application of provi-

sions of small loan acts as regards maximum amount of loan, 99 ALR 923.

Usury as affected by acceleration clause, 66 ALR3d 650.

#### 7-3-1. Short title.

This chapter shall be known and may be cited as the "Georgia Industrial Loan Act." (Ga. L. 1955, p. 431, § 1; Ga. L. 1997, p. 143, § 7.)

#### OPINIONS OF THE ATTORNEY GENERAL

**"Payday loans" are subject to the Industrial Loan Act,** O.C.G.A. § 7-3-1 et seq., notwithstanding the lender's use of token

consideration such as catalog coupons or purchase-leaseback arrangements. 2002 Op. Att'y Gen. No. 2002-3.

#### RESEARCH REFERENCES

**ALR.** — What constitutes Truth in Lending Act violation which "was not intentional and resulted from bona fide error not withstanding maintenance of procedures reason-

ably adapted to avoid any such error" within meaning of § 130(c) of Act (15 USCA § 1640(c)), 153 ALR Fed. 193.

#### 7-3-2. Purpose of chapter.

The purpose of this chapter is to authorize and provide regulation of the business of making loans of \$3,000.00 or less and to bring within the regulation of this chapter and within its provisions all loans of \$3,000.00 or less, whether or not made by a person organized or operating under the provisions and authority of some other statute, except those persons and loans expressly exempted by the terms of this chapter. Even though authorized by other statutes of force, such loans and the persons making them, unless expressly exempted, shall be within the operation of this chapter in accordance with its terms. (Ga. L. 1955, p. 431, § 2; Ga. L. 1975, p. 393, § 1.)

## JUDICIAL DECISIONS

**Cited** in Colter v. Consolidated Credit Corp., 115 Ga. App. 408, 154 S.E.2d 713 (1967); Bragg v. HFC, 140 Ga. App. 75, 230 S.E.2d 55 (1976); Marshall v. Fulton Nat'l Bank, 145 Ga. App. 190, 243 S.E.2d 266 (1978); General Fin. Corp. v. Sprouse, 577

F.2d 989 (5th Cir. 1978); Gainesville Fin. Servs., Inc. v. McDougal, 154 Ga. App. 820, 270 S.E.2d 40 (1980); FinanceAmerica Corp. v. Drake, 154 Ga. App. 811, 270 S.E.2d 449 (1980).

## OPINIONS OF THE ATTORNEY GENERAL

**Purpose of chapter; banks not subject to regulation by it.** — Purpose of the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.) is to provide regulation for otherwise unregulated entities engaged in business of

making small loans. Banks are otherwise regulated and are, therefore, not subject to regulation under that Act. 1979 Op. Att'y Gen. No. 79-33.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 54 Am. Jur. 2d, Moneylenders and Pawnbrokers, § 7.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, §§ 275, 276.

**ALR.** — Construction and application of provisions of small loan acts as regards maximum amount of loan, 99 ALR 923.

Construction and application of provisions of small loan statutes prohibiting the splitting up or dividing of a loan, or the existence of indebtedness under more than one contract of loan at the same time, 141 ALR 912.

## 7-3-3. Definitions.

As used in this chapter, the term:

- (1) "Commissioner" means the Industrial Loan Commissioner.
- (2) "License" means a single license issued or required under this chapter.
- (3) "Licensee" means a person to whom one or more licenses under this chapter have been issued.
- (4) "Loan" means any advance of money in an amount of \$3,000.00 or less under a contract requiring repayment and any and all renewals or refinancing thereof or any part thereof.
- (5) "Person" means individuals, copartnerships, associations, corporations, and all other legal and commercial entities. (Ga. L. 1955, p. 431, § 4; Ga. L. 1975, p. 393, § 1; Ga. L. 1989, p. 14, § 7; Ga. L. 1997, p. 143, § 7.)

## JUDICIAL DECISIONS

**"Loan".** — A tax preparer's payment to a taxpayer of a discounted sum in exchange for the right to a refund was not a "loan" but

instead constituted a "sale" by the taxpayer of a chose in action. Cullen v. Bragg, 180 Ga. App. 866, 350 S.E.2d 798 (1986).



**Cited** in *Robinson v. Colonial Disct. Co.*, 106 Ga. App. 274, 126 S.E.2d 824 (1962).

### OPINIONS OF THE ATTORNEY GENERAL

**An industrial loan license is required to make "payday loans" of \$3000 or less**, unless the lender is exempt under O.C.G.A. § 7-3-6. "Payday loans" are subject to the Georgia Industrial Loan Act, O.C.G.A.

§ 7-3-1 et seq., notwithstanding the lender's use of token consideration such as catalog coupons or purchase-leaseback arrangements. 2002 Op. Att'y Gen. No. 2002-3.

### 7-3-4. Applicability of chapter — Generally; effect on existing lenders.

This chapter shall apply to all persons, as defined in Code Section 7-3-3, unless expressly exempted in this chapter, engaged in the business of making loans in amounts of \$3,000.00 or less. On and after May 3, 1955, no person within the operation of this chapter shall charge, contract for, or receive, directly or indirectly, on or in connection with any loan, any interest, charges, fees, compensation, or consideration which is greater than the rates for same provided in this chapter or engage in the business of making such loans of \$3,000.00 or less without a license from the Commissioner as provided in this chapter. Persons engaged in the business of making loans of \$3,000.00 or less who are not exempted from the operation of this chapter may engage in such business and may make such loans lawfully under this chapter provided they comply with this chapter. (Ga. L. 1955, p. 431, § 3; Ga. L. 1975, p. 393, § 1; Ga. L. 1989, p. 14, § 7.)

### JUDICIAL DECISIONS

**Creditors not to receive illegal charges directly or indirectly.** — Creditors are admonished by the Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., to draft loan contracts in such a way that illegal charges will not be received either directly or indirectly. *General Fin. Corp. v. Sprouse*, 577 F.2d 989 (5th Cir. 1978).

**Loan violates the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.) if it refinances a loan which itself violates that Act.** *Williams v. Public Fin. Corp.*, 598 F.2d 349 (5th Cir. 1979).

**Lender cannot recover money lent on refinancing of loan which violates the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.).** *Williams v. Public Fin. Corp.*, 598 F.2d 349 (5th Cir. 1979).

**Cited** in *Robinson v. Colonial Disct. Co.*, 106 Ga. App. 274, 126 S.E.2d 824 (1962); *Securities Inv. Co. v. Pearson*, 111 Ga. App. 761, 143 S.E.2d 36 (1965); *Marshall v. Fulton Nat'l Bank*, 145 Ga. App. 190, 243 S.E.2d 266 (1978).

### RESEARCH REFERENCES

**ALR.** — Construction and application of provisions of small loan acts as regards maximum amount of loan, 99 ALR 923.

Construction and application of provisions of small loan statutes prohibiting the

splitting up or dividing of a loan, or the existence of indebtedness under more than one contract of loan at the same time, 141 ALR 912.

### 7-3-5. Applicability of chapter — Transactions by which money is paid others.

A loan and brokerage transaction or any other transaction by which money is paid or agreed to be paid others by the borrower in order to obtain the loan shall be subject in all respects to this chapter, if it involves a transaction of \$3,000.00 or less and is not otherwise specifically exempted by the terms of this chapter; and the interest and money paid or agreed to be paid others by the borrower in order to obtain the loan shall not exceed the charges authorized by this chapter, and the application of Code Section 7-4-8 is modified accordingly. (Ga. L. 1957, p. 331, § 3.)

### JUDICIAL DECISIONS

**Cited in** Vezzani v. Tallant, 121 Ga. App. 67, 172 S.E.2d 858 (1970).

### 7-3-6. Exemptions from chapter.

This chapter shall not apply to businesses organized or operating under the authority of any law of this state or of the United States relating to banks, trust companies, real estate loan or mortgage companies, federal savings and loan associations, Georgia building and loan associations, credit unions, and pawnbrokers or to the transactions of such businesses, which businesses are expressly excluded from regulation under this chapter and exempted from the operation of its provisions. This chapter also shall not apply to the University System of Georgia or its educational units, to private colleges and universities in this state and associations thereof, or to student loan transactions of such educational entities, which educational entities and student loan transactions thereof are expressly excluded from regulation under this chapter and exempted from the operation of its provisions. It is expressly provided that no bank, trust company, national bank, insurance company, or real estate loan or mortgage company authorized to do business in this state shall be required to obtain a license under this chapter nor shall the University System of Georgia or its educational units or private colleges and universities in this state and associations thereof be required to obtain a license under this chapter. It is further provided that persons making loans and charging interest thereon at a rate of not more than 8 percent simple interest per annum shall not be subject to this chapter or required to obtain a license under this chapter. (Ga. L. 1904, p. 79, § 18; Ga. L. 1920, p. 215, § 19; Code 1933, §§ 25-221, 25-318; Ga. L. 1955, p. 431, § 5; Ga. L. 1985, p. 249, § 1; Ga. L. 1997, p. 143, § 7.)

### JUDICIAL DECISIONS

**Purpose of Industrial Loan Act; banks not subject to its provisions.** — Purpose of the Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., is to eliminate abuses which

grow from unregulated entities engaging in small loan business. Banks are otherwise regulated and are expressly excluded from regulation by the Georgia Industrial Loan Act and are exempt from its provisions. *Marshall v. Fulton Nat'l Bank*, 145 Ga. App. 190, 243 S.E.2d 266 (1978).

**Cited** in *Colter v. Consolidated Credit Corp.*, 115 Ga. App. 408, 154 S.E.2d 713 (1967); *Carreker v. National Diversified, Inc.*, 135 Ga. App. 511, 218 S.E.2d 117 (1975).

## OPINIONS OF THE ATTORNEY GENERAL

**This section excludes state or federally chartered banks from regulation.** — Georgia statutes specifically provide that state or federally chartered banks are excluded from regulation under the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.) and are not required to obtain a license from the Georgia Industrial Loan Department. 1979 Op. Att'y Gen. No. 79-33.

**Section 7-1-292 supports proposition that banks are exempt from regulation.** — Further authority for proposition that banks were exempt from regulation under the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.) and are not required to obtain a license as authority lied in the language of former Code 1933, § 41A-1313 (see O.C.G.A. § 7-1-292). 1979 Op. Att'y Gen. No. 79-33.

**Section includes federal savings and loan associations.** — A federal savings and loan association is solely an invention of federal statute, and can be formed from existing state associations, including state building and loan associations, therefore, the term "Federal and Georgia building and loan association" formerly used in the statutes referred to and included a federal savings and loan association. 1978 Op. Att'y Gen. No. 78-12.

**Federal savings and loan associations are**

**exempted under this section.** — Consumer loans for amounts less than \$3,000.00, with interest charged in excess of 9 percent simple interest, would be governed by the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.), but the Act grants specific exemptions from its provisions to "banks, trust companies, real estate loan or mortgage companies, federal and Georgia building and loan associations". Although federal savings and loan associations are not specifically named as such, they are included in the list of exemptions; therefore, wholly owned subsidiaries of federal savings and loan associations, created pursuant to federal statute and regulation, are not required to obtain a license under the Georgia Industrial Loan Act in order to make loans of less than \$3,000.00 at interest rates permitted by Georgia usury statutes. 1978 Op. Att'y Gen. No. 78-12.

**Construction with usury laws.** — A merchant who makes cash advances of \$3,000.00 or less is subject to the provisions of the Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., rather than O.C.G.A. § 7-4-2(a)(2), regarding legal rate of interest, unless the merchant charges 8 percent simple interest per annum or less. 1984 Op. Att'y Gen. No. 84-79.

## RESEARCH REFERENCES

**ALR.** — Building and loan association as within statute relating to lenders of money, 99 ALR 1027.

### 7-3-7. Industrial Loan Commissioner; powers and duties generally; employees; deputy; training programs for licensees.

(a) There is created the office of Industrial Loan Commissioner; and the Commissioner of Insurance of the State of Georgia is designated and constituted the Industrial Loan Commissioner under this chapter and is



invested with all of the powers and authority provided for such Commissioner. In addition to those powers specifically enumerated, it shall be his duty and authority to supervise generally and to exercise regulatory powers over the making of loans of \$3,000.00 or less in the State of Georgia by persons governed and regulated by this chapter.

(b) The Commissioner is granted power and authority to make all rules and regulations not inconsistent with this chapter which in his judgment shall be necessary and appropriate to accomplish the purposes and objectives of this chapter, including, without limitation, the power and authority to make such rules and regulations regulating and controlling the manner in which loans of \$3,000.00 or less may be made under this chapter. Such rules and regulations shall be promulgated pursuant to public hearing after notice of such hearing is advertised at least once in one newspaper in Atlanta, Georgia, having general state-wide circulation not less than ten days prior to such hearing. In addition, such rules and regulations shall be promulgated in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Such rules and regulations so promulgated by the Commissioner in his discretion, consistent with the terms of this chapter and other applicable statutes, shall have the full force and effect of law. The Commissioner shall have authority to designate and employ and compensate agents and employees in the manner other agents and employees are employed by his department to assist him in the discharge of his duties under this chapter; and the Commissioner is authorized and empowered to delegate to an assistant or deputy authority to act in his place and stead in his absence or disability.

(c) The Commissioner is authorized to provide for training programs and seminars at such places, at such times, and in such manner as he shall deem advisable. Such programs and seminars shall be for the purpose of acquainting licensees and employees thereof with this chapter, with the rules and regulations promulgated thereunder, and with such other matters relative to the business authorized to be carried on by a licensee under this chapter as the Commissioner shall deem necessary. (Ga. L. 1955, p. 431, § 6; Ga. L. 1959, p. 55, § 1; Ga. L. 1963, p. 370, § 1; Ga. L. 1964, p. 288, § 1; Ga. L. 1975, p. 393, § 1; Ga. L. 1986, p. 855, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1986, "industrial loan commissioner" and "commissioner" were capitalized throughout this Code section.

Pursuant to Code Section 28-9-5, in 1987, the word "of" was inserted between "all" and "the powers" in the first sentence of subsection (a).

## JUDICIAL DECISIONS

**Jurisdiction of commissioner.** — Since the Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., defined and prevented usury, and provided a source of regulated funds for

those who had been borrowing at usurious rates from loan sharks, street shylocks, and wagebuyers, certain financial transactions involving loans, which the loan companies

were involved in, came within the jurisdiction of the Act; accordingly, the industrial loan commissioner had jurisdiction over wagebuyers, contrary to the argument of the loan companies that the commissioner did not have such jurisdiction. *USA Payday Cash Advance Ctrs. v. Oxendine*, 262 Ga. App. 632, 585 S.E.2d 924 (2003).

**Cited in** *Robinson v. Colonial Disct. Co.*, 106 Ga. App. 274, 126 S.E.2d 824 (1962); *Brown v. Quality Fin. Co.*, 112 Ga. App. 369, 145 S.E.2d 99 (1965); *Plant v. Blazer Fin. Servs., Inc.*, 598 F.2d 1357 (5th Cir. 1979); *Oglesby v. Blazer Fin. Servs., Inc.*, 622 F.2d 779 (5th Cir. 1980); *DOT v. Del-Cook Timber Co.*, 248 Ga. 734, 285 S.E.2d 913 (1982).

### OPINIONS OF THE ATTORNEY GENERAL

**Legislative intent to limit scope of operations of small loan lenders.** — The language employed in Ga. L. 1963, p. 370, § 1, when construed with its declared purpose of regulating the making of loans of \$3,000.00 or less, expresses the General Assembly's intent to limit the area or scope of operations of small loan lenders at least to some extent. 1963-65 Op. Att'y Gen. p. 716.

**Section authorizes rule limiting places at which loans may be made.** — The language used in Ga. L. 1963, p. 370, § 1 specifically empowering the commissioner to make rules and regulations which the commissioner considers necessary and appropriate to regulate small loans industry, including

regulating and controlling of manner of making loans, sufficiently defines framework for a rule limiting places at which loans may be made. 1963-65 Op. Att'y Gen. p. 716.

**Sales of credit insurance with loans are exempt from Rule 120-1-11-.03(2).** — Banks that make loans of type authorized by the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.) and sell credit accident and health insurance in connection therewith need not comply with Rule 120-1-11-.03(2) of Official Compilation, Rules and Regulations of the State of Georgia, which limits length of waiting periods for such insurance. 1980 Op. Att'y Gen. No. 80-42.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 54 Am. Jur. 2d, Moneylenders and Pawnbrokers, § 9.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, § 280.

### 7-3-8. License required; application; fees.

All persons engaged in the business of making loans of \$3,000.00 or less in the State of Georgia, unless expressly exempted therefrom, shall be required to obtain a license under this chapter. Application for license shall be made to the Commissioner in writing, under oath, on forms prescribed by the Commissioner and shall give the location from which the business is to be conducted and shall give the names of the persons connected with the business together with any other information required by the Commissioner. The application shall be accompanied by a fee of \$250.00 to cover the cost of investigation of the applicant and by a license fee of \$500.00. Said license shall expire on the last day of the calendar year in which granted, subject to renewal pursuant to Code Section 7-3-10. The Commissioner shall collect fees and costs as provided in this chapter and shall issue his receipt for all sums collected by him and periodically, not less than once in each quarter of each year, at such times as may be convenient, shall pay into the state treasury all sums collected by him. (Ga. L. 1904, p. 79, §§ 1, 2, 14; Ga. L. 1920, p. 215, § 2; Code 1933, §§ 25-201, 25-202, 25-203, 25-301,

25-302; Ga. L. 1955, p. 431, § 7; Ga. L. 1964, p. 288, § 2; Ga. L. 1975, p. 393, § 1; Ga. L. 1989, p. 14, § 7; Ga. L. 1992, p. 2725, § 1.)

### JUDICIAL DECISIONS

**License to operate when loan was made is prerequisite to recovery on loan.** — If a contract be one purportedly executed under the provisions of the Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., thus allowing interest charges otherwise usurious, it must appear affirmatively from the plaintiff's pleading as a condition precedent to recovery that payee was duly licensed to operate thereun-

der when obligation was incurred, and that action is based on a lawful transaction under the Act. *Colter v. Consolidated Credit Corp.*, 115 Ga. App. 408, 154 S.E.2d 713 (1967).

**Cited in** *Bentley v. C. & S. Loans, Inc.*, 109 Ga. App. 218, 135 S.E.2d 900 (1964); *Commercial Credit Plan, Inc. v. Parker*, 152 Ga. App. 409, 263 S.E.2d 220 (1979).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 54 Am. Jur. 2d, Moneylenders and Pawnbrokers, §§ 9, 10, 12.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, §§ 175, 281-283, 306.

### **7-3-9. Investigation of application; issuance or denial of license; purchase of licensed location.**

(a) Upon the filing of the application and the payment of the fees provided in Code Section 7-3-8, the Commissioner shall cause an investigation to be made. Notwithstanding any provision of Chapter 13 of Title 50, entitled the "Georgia Administrative Procedure Act," to the contrary, if the Commissioner has any doubt of the applicant meeting the standards of subsection (b) of this Code section, he shall issue a proposed order to be effective upon a later date without a hearing, unless any person subject to the order requests a hearing within ten days after receipt of the proposed order. Failure to make the request shall constitute a waiver of the right to a hearing pursuant to this Code section. The proposed order issued by the Commissioner shall contain or shall be accompanied by a notice of opportunity for a hearing which shall clearly explain that the hearing must be requested within ten days of receipt of the proposed order and notice. The proposed order and notice shall be served in person by the Commissioner or his agent or by registered or certified mail or statutory overnight delivery, return receipt requested. The Commissioner or such person as he designates shall hear evidence at such hearing and the hearing shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The cost of such hearing and of recording and transcribing the evidence may, in the discretion of the Commissioner, be charged to the person seeking such license.

(b) If the Commissioner shall find that:

(1) The financial responsibility, character, and general fitness of the applicant are such as to command the confidence of the public and to



warrant a belief that the business will not be operated unfairly or unlawfully contrary to the purposes of this chapter; and

(2) Allowing the applicant to engage in business will promote the convenience and advantage of the community in which the licensed office is to be located,

the Commissioner shall grant such application and issue to the applicant a license which shall be authority to engage in the business of making loans pursuant to said license in accordance with this chapter.

(c) Any demand for a hearing pursuant to this Code section shall specify in what respects such person is aggrieved and the grounds to be relied upon as a basis for the relief to be demanded at the hearing. Unless postponed by mutual consent, the hearing shall be held within 30 days after receipt by the Commissioner of the demand for a hearing.

(d) In the event any person shall purchase substantially all the assets used in a particular office of any existing licensee, the purchaser shall file an application for license; but, if the licensee selling such assets shall surrender his license for such location to the Commissioner, the purchaser shall not be required, in order to obtain a license, to show that the convenience and advantage of the community in which the licensed office will be located will be promoted by the establishment or continuance of the proposed business of making loans.

(e) The Commissioner shall grant or deny an application for a license made under this chapter within 60 days from the date of the filing of such application. (Ga. L. 1920, p. 215, § 4; Code 1933, § 25-304; Ga. L. 1955, p. 431, § 8; Ga. L. 1957, p. 331, § 1; Ga. L. 1983, p. 479, § 1; Ga. L. 2000, p. 1589, § 3.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1986, “commissioner” was capitalized throughout this Code section.

**Editor’s notes.** — Ga. L. 2000, p. 1589,

§ 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

## JUDICIAL DECISIONS

**Cited in** Bentley v. C. & S. Loans, Inc., 109 Ga. App. 218, 135 S.E.2d 900 (1964).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 54 Am. Jur. 2d, Moneylenders and Pawnbrokers, §§ 45-47, 53, 138.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, §§ 281, 282, 306.

**7-3-10. License required for each location; display; duration; annual fee; moving office within county.**

(a) No more than one place of business shall be maintained under the same license, but the Commissioner may issue more than one license to the same licensee.

(b) Each such license issued shall be conspicuously displayed in the place of business for which granted and shall remain in full force and effect until surrendered, revoked, or suspended as provided by this chapter.

(c) Every licensee shall, on or before December 20 of each year, pay to the Commissioner the sum of \$500.00 for each license held by him as an annual license fee for the succeeding calendar year.

(d) If a licensee wishes to move his office within the county, he shall give the Commissioner written notice thereof, which notice shall specify the address or location to which the licensee desires to move and shall also set out, in such form as the Commissioner may require, facts and circumstances which it is contended will show that the removal to the new location will promote the convenience and advantage of that community. Thereafter, the Commissioner shall handle this request in the same manner in which he handles a new application under Code Section 7-3-9, insofar as that Code section is applicable. (Ga. L. 1904, p. 79, § 1; Civil Code 1910, § 3450; Ga. L. 1920, p. 215, §§ 7, 8, 9; Code 1933, §§ 25-205, 25-307, 25-308, 25-309; Ga. L. 1955, p. 431, § 9; Ga. L. 1963, p. 370, § 2; Ga. L. 1964, p. 288, § 4; Ga. L. 1989, p. 14, § 7; Ga. L. 1992, p. 2725, § 2.)

**JUDICIAL DECISIONS**

**Cited** in *Brooks v. Maryville Loan & Fin. Co.*, 679 F.2d 837 (11th Cir. 1982).

**OPINIONS OF THE ATTORNEY GENERAL**

**Licensee may make loans at place other than place of business.** — The Industrial Loan Commissioner may give special permission to certain selected licensees to make loans at places other than place of business

of licensee provided there is a reasonable basis for classifying such licensees in a separate category to receive this special permission. 1963-65 Op. Att'y Gen. p. 716.

**7-3-11. Failure to begin business or suspending activities after license issued.**

In the event a licensee does not begin the operation of business under such license within a period of 120 days from the date of the issuance of such license or in the event a licensee, after having begun the operation of business under the license, remains inactive in such business for a period of 120 days, such license shall be subject to suspension or revocation by the Commissioner after notice and hearing under the procedure provided in

Code Section 7-3-24 for the revocation or suspension of licenses. Any order or decision of the Commissioner on such matter shall be subject to review as provided in Code Section 7-3-24. (Ga. L. 1964, p. 288, § 3; Ga. L. 1989, p. 14, § 7.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 51 Am. Jur. 2d, Licenses and Permits, § 88 et seq.      **C.J.S.** — 53 C.J.S., Licenses, §§ 48, 50, 52, 54, 55.

#### 7-3-12. Books, records, and reports.

(a) Each licensee shall keep and use in his business sufficient books and records to enable the Commissioner to determine whether or not the licensee is complying with this chapter or any other Act under which such licensee is operating, and such licensee shall preserve such record for at least four years after making the final entry thereon. The renewal or refinancing of a loan shall not constitute a final entry.

(b) The Commissioner may, under rules and regulations promulgated by him under the procedure provided in Code Section 7-3-7, require annual reports from licensees to facilitate the performance of his duties and to regulate effectively the making of loans under this chapter. (Ga. L. 1904, p. 79, § 6; Civil Code 1910, §§ 3454, 3455; Ga. L. 1920, p. 215, § 11; Code 1933, §§ 25-209, 25-210, 25-310; Ga. L. 1955, p. 431, § 10; Ga. L. 1989, p. 14, § 7.)

#### JUDICIAL DECISIONS

**Cited** in *Robinson v. Colonial Disct. Co.*, 106 Ga. App. 274, 126 S.E.2d 824 (1962).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 54 Am. Jur. 2d, Moneylenders and Pawnbrokers, § 15.

#### 7-3-13. False advertising prohibited.

No person shall advertise, display, distribute, or broadcast in any manner whatsoever any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for loans subject to this chapter. (Ga. L. 1920, p. 215, § 12; Code 1933, § 25-312; Ga. L. 1955, p. 431, § 14.)

#### 7-3-14. Maximum loan amount, period, and charges.

Every licensee under this chapter may loan any sum of money not exceeding \$3,000.00 for a period of 36 months and 15 days or less and may



charge, contract for, collect, and receive interest and fees and may require the fulfillment of conditions on such loans as provided in this Code section:

(1) **INTEREST.** A licensee may charge, contract for, receive, and collect interest at a rate not to exceed 10 percent per annum of the face amount of the contract, whether repayable in one single payment or repayable in monthly or other periodic installments. On loan contracts repayable in 18 months or less, the interest may be discounted in advance; and, on contracts repayable over a greater period, the interest shall be added to the principal amount of the loan. On all contracts, interest or discount shall be computed proportionately on equal calendar months;

(2) **LOAN FEE.** In addition thereto, a licensee may charge, contract for, receive, or collect at the time the loan is made a fee in an amount not greater than 8 percent of the first \$600.00 of the face amount of the contract plus 4 percent of the excess; provided, however, that such fee shall not be charged or collected on that part of a loan which is used to pay or apply on a prior loan or installment of a prior loan from the same licensee to the same borrower made within the immediately preceding six-month period; provided, however, if the loan balance is \$300.00 or less, the said period shall be two months, not six months; provided, further, that nothing contained in this paragraph and paragraph (1) of this Code section shall be construed to permit charges, interest, or fees of any nature whatsoever in the aggregate in excess of the charges, interest, and fees which would constitute a violation of Code Section 7-4-18 and this chapter shall in no way affect Code Section 7-4-18. If a borrower prepays his or her entire loan to a licensee and within the following 15 days makes a new loan with that licensee and if this is done within the six-month period or the two-month period above described, as may be applicable, the fee may be charged only on the excess by which the face amount of the new contract exceeds the amount which the borrower repaid to that licensee within the said 15 day period;

(3) **INSURANCE PREMIUMS.** A licensee may charge and collect from the borrower premiums actually paid or to be paid for insurance obtained for the borrower. A licensee may accept as security on any loan or advance made under this chapter any one or any combination of the following:

- (A) Insurance on tangible property against substantial risks or loss;
- (B) Reasonable insurance on the life and health of the principal party; or
- (C) Reasonable insurance against accident of the principal party;

provided, however, that any such insurance shall be reasonably related to the type and value of the property insured and to the amount and term of the loan and shall be obtained from an insurance company authorized to conduct such business in the State of Georgia and at rates lawfully filed

by such company with the Commissioner of Insurance and through a regular insurance agent licensed by the Commissioner of Insurance; provided, further, the amount of life, health, or accident insurance required as security for loans made under this chapter shall not exceed the amount of the loan, including charges, to be secured; and the premiums on such insurance required of the principal party obligated shall be limited to premiums reasonably based upon reliable actuarial experience and sound insurance practice; and the Commissioner is authorized and directed to promulgate rules and regulations to effectuate this provision in accordance with the spirit and intent thereof. It shall be the duty of the Commissioner from time to time under the foregoing direction, after public hearing in the manner provided in subsection (b) of Code Section 7-3-7, to determine and promulgate the rates and maximum premiums permissible to be charged for life, health, and accident insurance required as security for a loan made under this chapter and to make regulations incident thereto necessary to effectuate the same; such premiums, when thus established and as changed from time to time in the manner aforesaid, shall be the maximum effective and permissible charges under this paragraph. Premiums paid or to be paid pursuant to the authority of this paragraph shall not constitute interest. The insurance company in turn may pay to the party writing the insurance policy sold in connection with the loan a fee or commission in an amount which is reasonable in relationship to the transaction and in no event in excess of the amount of fee or commission customarily paid within the industry where comparable insurance is sold in a transaction not involving credit, as determined by the Commissioner;

(4) **LATE CHARGE.** A licensee may charge and collect from the borrower a late or delinquent charge of \$10.00 or an amount equal to 5¢ for each \$1.00 of any installment which is not paid within five days from the date such payment is due, whichever is greater, provided that this late or delinquent charge shall not be collected more than once for the same default; and

(5) **MAINTENANCE CHARGE.** In addition thereto, a licensee may contract for, charge, receive, and collect a maintenance charge of \$3.00 for each month in the term of the loan contract on each loan made, whether repayable in one single payment or repayable in weekly, monthly, or other periodic installments. Refunds of unearned maintenance charges shall be made in accordance with the method prescribed in Code Section 7-3-17, and such maintenance charges will be subject to paragraph (4) of this Code section. Nothing contained in Code Section 7-4-18, as now or hereafter amended, shall be construed to apply to this paragraph; and loans made in conformity with this paragraph shall in no way constitute a violation of Code Section 7-4-18, as now or hereafter amended. (Ga. L. 1904, p. 79, §§ 10, 12; Civil Code 1910, §§ 3458, 3459, 3461; Ga. L. 1920, p. 215, §§ 13, 14; Code 1933, §§ 25-213, 25-214, 25-216, 25-301, 25-313,

25-315, 25-317; Ga. L. 1935, p. 394, § 1; Ga. L. 1955, p. 431, § 15; Ga. L. 1964, p. 288, § 5; Ga. L. 1975, p. 393, §§ 2, 3; Ga. L. 1977, p. 288, § 1; Ga. L. 1980, p. 509, §§ 1, 3; Ga. L. 1981, p. 621, § 1; Ga. L. 1989, p. 14, § 7; Ga. L. 1997, p. 143, § 7; Ga. L. 2001, p. 205, § 1.)

**Law reviews.** — For article, “Acceleration Clauses in Georgia: Consumer Installment Contracts and the Federal Truth-In-Lending Act,” see 27 Mercer L. Rev. 969 (1976). For article discussing methods of computation

of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978). For article, “Business Associations,” see 53 Mercer L. Rev. 109 (2001).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

#### INTEREST

#### LOAN FEE

#### FACE AMOUNT OF CONTRACT

#### ACCELERATION OF INTEREST

#### INSURANCE

#### LATE CHARGES

### General Consideration

**Editor’s notes.** — In light of subsections (g) and (h) of § 7-3-29, decisions rendered prior to amendment of that section by Ga. L. 1980, p. 1784, §§ 1, 2 have been included in the annotations for this Code section.

**Purpose.** — In enacting O.C.G.A. § 7-3-14, the General Assembly was concerned with the possible exorbitant and unmerited exaction of profits by the original lender in a renewal or refinancing. Although there is nothing to indicate that the General Assembly specifically considered the “anti-competition” problem, the clear thrust and underlying policy of this legislation is to provide some protection to debtors in small loan transactions, while there is no indication that solicitude for second lenders was even a minor policy consideration. *Ford v. Termplan, Inc.*, 528 F. Supp. 1016 (N.D. Ga. 1981).

**Policy consideration underlying usury laws.** — Purpose of the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.) is to define and prevent usury. One consideration underlying the usury laws is that a creditor should not avail oneself of the necessitous condition of one’s debtor to exact burdensome and oppressive terms. *Securities Inv. Co. v. Pearson*, 111 Ga. App. 761, 143 S.E.2d 36 (1965).

**Loan may not exceed three years.** — It is immaterial whether interest is charged for less than 24 months (now 36 months and 15 days); former Code 1933, § 25-315 plainly stated that loan may not exceed two years (now three years, 15 days). *Abrams v. Commercial Credit Plan, Inc.*, 128 Ga. App. 520, 197 S.E.2d 384 (1973).

**Section prohibits loans to a borrower which exceed \$3,000.00.** — When statute provides that every licensee thereunder may loan any sum of money not exceeding \$3,000.00 it means that the company cannot be a creditor to any particular person, firm, or corporation at any one time for an amount in excess of this maximum. It may make any number of loans, so long as the debtors are different persons. *Securities Inv. Co. v. Pearson*, 111 Ga. App. 761, 143 S.E.2d 36 (1965).

**Section 1-3-1 inapplicable to this section.** — Former Code 1933, § 102-102 (see O.C.G.A. § 1-3-1) applies only where days are to be counted, and where months and years are to be considered, as in former Code 1933, § 25-315, the rule was not applicable. *Gray v. Quality Fin. Co.*, 130 Ga. App. 762, 204 S.E.2d 483 (1974).

**When state law is inconsistent with truth in lending law.** — State law is inconsistent with requirements of truth in lending law if it requires creditor to make disclosures differ-



ent from those required by federal law as to form, content, terminology or time of delivery. *Blalock v. Aetna Fin. Co.*, 511 F. Supp. 33 (N.D. Ga. 1980).

**Use of out-of-state banks by loan companies.** — Loan companies were not entitled to declaratory judgment relief on their claim that they were not in violation of the Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., for certain practices they were allegedly engaged in because they were using an out-of-state bank to make their loans through them, and, thus, were not subject to the Act, as the industrial loan commissioner had not ruled on whether the practice of using an out-of-state bank exempted them from the Act, which meant they had not exhausted their administrative remedies before seeking judicial relief. *USA Payday Cash Advance Ctrs. v. Oxendine*, 262 Ga. App. 632, 585 S.E.2d 924 (2003).

**Refinancing by original lender.** — In a refinancing by an original lender, where both sides must agree to an extension of credit and the lender presumably is not losing profits, there is no reason to depart from the general mandate of O.C.G.A. §§ 7-3-14 and 7-3-15. O.C.G.A. Ch. 3, T. 7 already provides for “add on” interest, earned uniformly on the entire original amount of the loan, without regard to installment reductions in the outstanding balance. *Ford v. Termplan, Inc.*, 528 F. Supp. 1016 (N.D. Ga. 1981).

**Renewal by original lender less costly than by second lender.** — O.C.G.A. Ch. 3, T. 7 distinguishes between original and second lenders with the result that a renewal or refinancing by an original lender is less costly than if effected by a second lender. *Ford v. Termplan, Inc.*, 528 F. Supp. 1016 (N.D. Ga. 1981).

**Cited in** *Robbins v. Welfare Fin. Corp.*, 95 Ga. App. 90, 96 S.E.2d 892 (1957); *Haire v. Allied Fin. Co.*, 99 Ga. App. 649, 109 S.E.2d 291 (1959); *Robinson v. Colonial Dist. Co.*, 106 Ga. App. 274, 126 S.E.2d 824 (1962); *Brown v. Quality Fin. Co.*, 112 Ga. App. 369, 145 S.E.2d 99 (1965); *Coile v. Finance Co. of Am.*, 221 Ga. 863, 148 S.E.2d 328 (1966); *Clark v. Liberty Loan Corp.*, 116 Ga. App. 213, 156 S.E.2d 535 (1967); *Johnson v. Public Fin. Corp.*, 126 Ga. App. 557, 191 S.E.2d 334 (1972); *Roberts v. Allied Fin. Co.*, 129 Ga. App. 10, 198 S.E.2d 416 (1973); *Cullers*

*v. Home Credit Co.*, 130 Ga. App. 441, 203 S.E.2d 544 (1973); *Cook v. First Nat'l Bank*, 130 Ga. App. 587, 203 S.E.2d 870 (1974); *Sellers v. Alco Fin., Inc.*, 130 Ga. App. 769, 204 S.E.2d 478 (1974); *Gray v. Quality Fin. Co.*, 130 Ga. App. 762, 204 S.E.2d 483 (1974); *Douglas v. Dixie Fin. Corp.*, 139 Ga. App. 251, 228 S.E.2d 144 (1976); *HFC v. Middlebrooks*, 139 Ga. App. 224, 228 S.E.2d 204 (1976); *Jones v. Community Loan & Inv. Corp.*, 544 F.2d 1228 (5th Cir. 1976); *Wiggins v. Liberty Loan Corp.*, 143 Ga. App. 46, 237 S.E.2d 418 (1977); *Childs v. Liberty Loan Corp.*, 144 Ga. App. 715, 242 S.E.2d 354 (1978); *Southern Discount. Co. v. Ector*, 152 Ga. App. 244, 262 S.E.2d 457 (1979); *Gresham v. Termplan, Inc.*, 480 F. Supp. 149 (N.D. Ga. 1979); *Shelley v. Liberty Loan Corp.*, 153 Ga. App. 47, 264 S.E.2d 537 (1980); *Chrysler Credit Corp. v. Cooper*, 7 Bankr. 537 (Bankr. N.D. Ga. 1980); *Moore v. HFC*, 160 Ga. App. 339, 287 S.E.2d 72 (1981); *Gresham v. Termplan, Inc.*, 648 F.2d 312 (5th Cir. 1981); *State Farm Mut. Auto. Ins. Co. v. Bates*, 542 F. Supp. 807 (N.D. Ga. 1982); *Aetna Fin. Co. v. Brown*, 172 Ga. App. 537, 323 S.E.2d 720 (1984).

### Interest

**Former Code 1933, § 25-315 (see O.C.G.A. § 7-3-14(1)) was mandatory** as to interest on contracts repayable over more than 18 months. *Slatter v. Aetna Fin. Co.*, 377 F. Supp. 806 (N.D. Ga. 1974), rev'd on other grounds sub nom. *Jones v. Community Loan & Inv. Corp.*, 526 F.2d 642 (5th Cir.), remanded on rehearing, 544 F.2d 1228 (5th Cir. 1976), cert. denied, 431 U.S. 934, 97 S. Ct. 2642, 53 L. Ed. 2d 250 (1977).

**Advance discounts of interest.** — O.C.G.A. § 7-3-14 does not provide a flexibility period for loans qualifying for the advance discount and a loan due in 18 months and 15 days exceeds the limit authorized by the statute. *United States Life Credit Corp. v. Johnson*, 161 Ga. App. 864, 290 S.E.2d 280 (1982).

**Note on which interest was deducted in advance void.** — Where in suit by licensee against borrower the note attached to petition shows that loan was for period exceeding 18 months and shows on its face that interest was deducted in advance rather than added to the loan, such deduction resulted in a charge exceeding that authorized in

**Interest (Cont'd)**

former Code 1933, § 25-315 (see O.C.G.A. § 7-3-14) and rendered note void. *Community Fin. Co. v. Lloyd*, 114 Ga. App. 230, 150 S.E.2d 845 (1966).

**Interest included in loan cannot be discounted in advance.** — Where maximum interest for 24-month note had already been calculated and included in the loan it could not be discounted in advance, and an attempt to accelerate and claim unearned interest on otherwise unmatured installments was usurious and instrument authorizing its collection is void. *Lawrimore v. Sun Fin. Co.*, 131 Ga. App. 96, 205 S.E.2d 110 (1974) (decided prior to 1980 amendment of § 7-3-29).

**The starting point of a loan is the date of execution** regardless of when the first payment is made or when the interest begins to run; a lender could not legally discount interest on a loan in advance under O.C.G.A. § 7-3-14, though the loan contract required repayment over an 18-month period, where the first monthly installment was due more than a month after the execution of the loan. *Brown v. Termplan, Inc.*, 693 F.2d 1047 (11th Cir. 1982).

**Former Code 1933, § 25-315 (see O.C.G.A. § 7-3-14(1)) allowed interest to be charged only on amount that was borrowed.** *Consolidated Credit Corp. v. Peppers*, 144 Ga. App. 401, 240 S.E.2d 922 (1977), overruled on another point, *FinanceAmerica Corp. v. Drake*, 154 Ga. App. 811, 270 S.E.2d 449 (1980).

**Lender's options and duty regarding collection of loan fee and basic interest.** — Lender has option with respect to how loan fee is collected and with respect to how basic interest is collected on loans repayable in 18 months or less, but must add on interest for loans repayable over a period in excess of 18 months. In this latter instance the basic interest fee will never be required to be denoted as prepaid finance charge, while in the two former instances it will depend on how lender collects loan fee and/or basic interest. *Slatter v. Aetna Fin. Co.*, 377 F. Supp. 806 (N.D. Ga. 1974), rev'd on other grounds sub nom. *Jones v. Community Loan & Inv. Corp.*, 526 F.2d 642 (5th Cir.), remanded on rehearing, 544 F.2d 1228 (5th Cir. 1976), cert. denied, 431 U.S. 934, 97 S.

Ct. 2642, 53 L. Ed. 2d 250 (1977).

**Loan violated section.** — A loan instrument violated former Code 1933, § 25-315 (see O.C.G.A. § 7-3-14) by calculating and including more than the maximum interest which could be charged for a 24-month (now 36-month) period. *Hobbiest Fin. Corp. v. Spivey*, 135 Ga. App. 353, 217 S.E.2d 613 (1975).

**Maximum interest rate calculated on total amount financed plus loan fee is not usurious.** *Jones v. Community Loan & Inv. Corp.*, 526 F.2d 642 (5th Cir.), remanded on rehearing, 544 F.2d 1228 (5th Cir. 1976), cert. denied, 431 U.S. 934, 97 S. Ct. 2642, 53 L. Ed. 2d 250 (1977).

**Collection of unearned interest is not per se improper under Georgia law.** *Barrett v. Vernie Jones Ford, Inc.*, 395 F. Supp. 904 (N.D. Ga. 1975), rev'd on other grounds sub nom. *McDaniel v. Fulton Nat'l Bank*, 543 F.2d 568 (5th Cir. 1976), aff'd, 578 F.2d 1185 (5th Cir. 1978).

**Notes complying with section.** — Notes providing for pro rata rebate of interest upon default and acceleration comply with O.C.G.A. § 7-3-14. *Scroggins v. Whitfield Fin. Co.*, 157 Ga. App. 655, 278 S.E.2d 411 (1981).

**Loan Fee**

**Section 7-3-17 and this section compared.** — There is a limit on the loan fees an original lender can charge when part or all of a prior loan is repaid and has made no similar provision for a second lender. There is no reason to believe that the General Assembly evaluated its priorities in a different fashion in enacting O.C.G.A. § 7-3-17. *Ford v. Termplan, Inc.*, 528 F. Supp. 1016 (N.D. Ga. 1981).

**Misleading listing in disclosure statement.** — A disclosure statement with two identical subheadings labelled "LOAN FEE," under which two different amounts were listed, violated the federal Truth-in-Lending Act because there was no indication that the prepaid finance charge was the total of these two items. *Varner v. Century Fin. Co.*, 738 F.2d 1143 (11th Cir. 1984).

**Lender is not obligated to disclose the sum of 8 percent and 4 percent fees.** *Carroll v. Termplan, Inc.*, 476 F. Supp. 727 (N.D. Ga. 1979).



**Paragraph (2) is permissive** as to time loan fee is collected, and repayment period is immaterial. *Slatter v. Aetna Fin. Co.*, 377 F. Supp. 806 (N.D. Ga. 1974), rev'd on other grounds sub nom. *Jones v. Community Loan & Inv. Corp.*, 526 F.2d 642 (5th Cir.), remanded on rehearing, 544 F.2d 1228 (5th Cir. 1976), cert. denied, 431 U.S. 934, 97 S. Ct. 2642, 53 L. Ed. 2d 250 (1977).

**Method of determination.** — While O.C.G.A. § 7-3-14(2) provides a two-tier computation for determining the maximum allowable loan fee, nothing requires that the loan fee actually charged be determined by this method, nor is a licensee required to disclose the method of computing the loan fee. *Briscoe v. First Nat'l Bank & Trust Co.*, 167 Ga. App. 886, 307 S.E.2d 767 (1983).

**Fee exceeded that allowed by act.** — Including interest in computational base used to calculate loan fee on note of more than 18 months results in fee exceeding that permitted by this act. *Consolidated Credit Corp. v. Peppers*, 144 Ga. App. 401, 240 S.E.2d 922 (1977), overruled on other grounds, *FinanceAmerica Corp. v. Drake*, 154 Ga. App. 811, 270 S.E.2d 449 (1980).

**Lender may charge interest on loan fees.** — Since lender is entitled to fees for making loan, and does not receive them at that time, but by means of installment payments during term of loan, the lender is entitled to charge interest thereon. *Lee v. Beneficial Fin. Co.*, 159 Ga. App. 205, 282 S.E.2d 770 (1981).

**Interest on amount borrowed not includable in computational base for loan fee.** — Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., does not permit lenders to charge borrowers interest on interest by including interest on amount borrowed in computational base used to calculate loan fee to be paid by borrowers. *Sanders v. Liberty Loan Corp.*, 153 Ga. App. 859, 267 S.E.2d 286 (1980), overruled on other grounds, *FinanceAmerica Corp. v. Drake*, 154 Ga. App. 811, 270 S.E.2d 449 (1980).

**Fee authorized under former Code 1933, § 25-315 constitutes prepaid finance charge** within meaning of Truth-in-Lending Act, 15 U.S.C. § 1601 et seq. Regulation Z, 12 C.F.R. § 226.8. *Grubb v. Oliver Enters., Inc.*, 358 F. Supp. 970 (N.D. Ga. 1972).

**Loan fees under paragraph (2) must be disclosed.** — In Georgia, a consumer lender

may exact loan fees of not more than 8 percent of first \$600.00 of face amount of contract plus 4 percent of any excess, and such charges, if made, must be disclosed in truth in lending disclosure statements as a prepaid finance charge. *Ector v. Southern Dist. Co.*, 499 F. Supp. 284 (N.D. Ga. 1980).

**Acceleration clause not providing for rebate of unearned charges** is usurious and note, security deed and foreclosure thereunder are null and void. *Clyde v. Liberty Loan Corp.*, 249 Ga. 78, 287 S.E.2d 551 (1982).

### Face Amount of Contract

**Face amount of contract** means amount borrower must borrow to obtain amount desired. *Consolidated Credit Corp. v. Peppers*, 144 Ga. App. 401, 240 S.E.2d 922 (1977), overruled on other grounds, *FinanceAmerica Corp. v. Drake*, 154 Ga. App. 811, 270 S.E.2d 449 (1980); *Carter v. Swift Loan & Fin. of Columbus, Inc.*, 148 Ga. App. 358, 251 S.E.2d 379 (1978), overruled on other grounds, *FinanceAmerica Corp. v. Drake*, 154 Ga. App. 811, 270 S.E.2d 449 (1980); *Wessinger v. Kennesaw Fin. Co.*, 151 Ga. App. 660, 261 S.E.2d 649 (1979), overruled on other grounds, *FinanceAmerica Corp. v. Drake*, 154 Ga. App. 811, 270 S.E.2d 449 (1980); *Ector v. Southern Dist. Co.*, 484 F. Supp. 654 (N.D. Ga. 1979).

Face amount of contract means amount borrowed in both paragraphs (1) and (2) of former Code 1933, § 25-315. *FinanceAmerica Corp. v. Drake*, 154 Ga. App. 811, 270 S.E.2d 449 (1980).

Face amount of contract may be determined by adding together amounts of all constituent discounted elements that debtor must borrow in order to have amount the debtor desires in hand or, assuming all elements have been calculated properly, by taking final payback figure and subtracting therefrom amount of all nondiscounted elements. *Lee v. Beneficial Fin. Co.*, 159 Ga. App. 205, 282 S.E.2d 770 (1981).

**Calculation of face amount of contract or amount borrowed.** — Face amount of contract or amount borrowed may be determined by striking from total payback figure, amount of interest to be paid under contract and amount of monthly maintenance charge. *Carter v. Swift Loan & Fin. of Columbus, Inc.*, 148 Ga. App. 358, 251 S.E.2d 379 (1978), overruled on other grounds,



**Face Amount of Contract (Cont'd)**

*FinanceAmerica Corp. v. Drake*, 154 Ga. App. 811, 270 S.E.2d 449 (1980); *Wessinger v. Kennesaw Fin. Co.*, 151 Ga. App. 660, 261 S.E.2d 649 (1979).

Phrase "FAC, face amount of contract" has the same meaning in both O.C.G.A. § 7-3-14(1) and (2) which is amount necessary for borrower to borrow in order to obtain amount desired. *Lee v. Beneficial Fin. Co.*, 159 Ga. App. 205, 282 S.E.2d 770 (1981).

**Amount of loan fee is a constituent element** of (FAC) face amount of contract under both O.C.G.A. § 7-3-14(1) and (2). *Lee v. Beneficial Fin. Co.*, 159 Ga. App. 205, 282 S.E.2d 770 (1981).

**Amount borrowed in discount loans includes principal and interest.** — Amount borrowed equals total payback figure only for discount loans, in which both principal and interest are borrowed. *Consolidated Credit Corp. v. Peppers*, 144 Ga. App. 401, 240 S.E.2d 922 (1977), overruled on another point, *FinanceAmerica Corp. v. Drake*, 154 Ga. App. 811, 270 S.E.2d 449 (1980).

**Amount necessary to borrow does not include interest.** — Where note is for more than 18 months, amount necessary for borrower to borrow does not include interest on the note. *Consolidated Credit Corp. v. Peppers*, 144 Ga. App. 401, 240 S.E.2d 922 (1977), overruled on other grounds, *FinanceAmerica Corp. v. Drake*, 154 Ga. App. 811, 270 S.E.2d 449 (1980).

**Interest on Georgia Industrial Loan Act loan of greater than 18 months is not discounted and it is therefore not necessary for debtor to borrow nondiscounted interest in order to obtain amount the debtor desires in hand;** thus, amount of that nondiscounted interest does not become element of computational (FAC) face amount of contract base from which either interest or loan fee is calculated. *Lee v. Beneficial Fin. Co.*, 159 Ga. App. 205, 282 S.E.2d 770 (1981).

**Interest discounted in advance, is computational element.** — Where interest on Georgia Industrial Loan Act loan of 18 months or less is discounted or deducted in advance and it therefore becomes necessary for debtor to "borrow" discounted interest in order to obtain total amount the debtor desires in hand, amount of that discounted

interest becomes element of computational (FAC) face amount of contract base from which interest under O.C.G.A. § 7-3-14(1) and loan fee under O.C.G.A. § 7-3-14(2) are derived. *Lee v. Beneficial Fin. Co.*, 159 Ga. App. 205, 282 S.E.2d 770 (1981).

**Where loan is repayable in 18 months or less** and where interest is discounted, the "face amount" of the contract is also synonymous with the total payback amount of the loan. *Briscoe v. First Nat'l Bank & Trust Co.*, 167 Ga. App. 886, 307 S.E.2d 767 (1983).

**Interest is not borrowed on nondiscount loans.** — Interest is not borrowed on nondiscount loans, thus amount borrowed equals total payback figure minus interest. *Consolidated Credit Corp. v. Peppers*, 144 Ga. App. 401, 240 S.E.2d 922 (1977), overruled on other grounds, *FinanceAmerica Corp. v. Drake*, 154 Ga. App. 811, 270 S.E.2d 449 (1980).

**Maintenance charge is not element of computational face amount.** — Maintenance charge under O.C.G.A. § 7-3-14(5) "for each month in the term of the loan contract" is not a discountable element which can be deducted in advance so as to constitute an amount which debtor has to borrow in order to obtain amount the debtor desires in hand and, therefore, it does not become an element of computational (FAC) face amount of contract base. *Lee v. Beneficial Fin. Co.*, 159 Ga. App. 205, 282 S.E.2d 770 (1981).

**Inclusion of nondiscountable interest in face amount of contract computational base results in excessive loan fee.** *Lee v. Beneficial Fin. Co.*, 159 Ga. App. 205, 282 S.E.2d 770 (1981).

**Acceleration of Interest**

**Acceleration clauses are not per se invalid.** *Bragg v. HFC*, 140 Ga. App. 75, 230 S.E.2d 55 (1976).

**Acceleration clause providing for any required refund of interest is valid.** — Language of loan contract to effect that default will render entire sum remaining at once due and payable is objectionable as permitting recovery of unearned interest; when, however, a complementing clause is added, limiting accelerated sum to such amount less any required refund of interest, the usurious objection no longer applies. *Bragg v. HFC*, 140 Ga. App. 75, 230 S.E.2d 55 (1976).

**Where acceleration clause renders note usurious, note is unenforceable.** — If effect of an acceleration clause is to render note as a whole usurious, the note is unenforceable in Georgia courts. *Barrett v. Vernie Jones Ford, Inc.*, 395 F. Supp. 904 (N.D. Ga. 1975), rev'd on other grounds sub nom. *McDaniel v. Fulton Nat'l Bank*, 543 F.2d 568 (5th Cir. 1976), aff'd, 578 F.2d 1185 (5th Cir. 1978) (decided prior to amendment of § 7-3-29).

**Acceleration clause which includes unearned interest voids the contract.** — Acceleration clause in Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., contract which upon default permits collection of entire balance due on contract without excluding unearned interest is violative of act and voids contract. *Diggs v. Swift Loan & Fin. Co.*, 154 Ga. App. 389, 268 S.E.2d 433 (1980) (decided prior to 1980 amendment of § 7-3-29).

Where acceleration of a debt, combined with a claim of unearned interest, renders obligation usurious, it becomes void under provisions of Industrial Loan Act, O.C.G.A. § 7-3-1 et seq. *Barrett v. Vernie Jones Ford, Inc.*, 395 F. Supp. 904 (N.D. Ga. 1975), rev'd on other grounds sub nom. *McDaniel v. Fulton Nat'l Bank*, 543 F.2d 568 (5th Cir. 1976), aff'd, 578 F.2d 1185 (5th Cir. 1978) (decided prior to 1980 amendment of § 7-3-29).

**Provision rendering remaining installments immediately due and payable renders obligation usurious.** — Provision rendering all remaining installments at once due and collectible is a contract for collection of usurious interest which voids the obligation. *Allen v. Alco Fin., Inc.*, 131 Ga. App. 545, 206 S.E.2d 547 (1974) (decided prior to 1980 amendment of § 7-3-29).

**Acceleration clause enforceable unless rendering note usurious.** — Acceleration clause not providing for rebate of unearned interest is enforceable absent finding that clause, as applied, renders note violative of state usury laws. Once such finding has been made, however, the note becomes void. *Barrett v. Vernie Jones Ford, Inc.*, 395 F. Supp. 904 (N.D. Ga. 1975), rev'd on other grounds sub nom. *McDaniel v. Fulton Nat'l Bank*, 543 F.2d 568 (5th Cir. 1976), aff'd, 578 F.2d 1185 (5th Cir. 1978) (decided prior to 1980 amendment of § 7-3-29).

**Usurious collection voids obligation whether or not creditor attempts enforce-**

**ment.** — Provision in note authorizing usurious collection alone is sufficient to void obligation, even where creditor does not attempt enforcement. *Barrett v. Vernie Jones Ford, Inc.*, 395 F. Supp. 904 (N.D. Ga. 1975), rev'd on other grounds sub nom. *McDaniel v. Fulton Nat'l Bank*, 543 F.2d 568 (5th Cir. 1976), aff'd, 578 F.2d 1185 (5th Cir. 1978) (decided prior to 1980 amendment of § 7-3-29).

**Acceleration clause which includes unearned interest is void.** — Under Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., loan agreement which provided that lender, under certain conditions, could accelerate payment of entire unpaid balance of loan, including unearned interest, is void, not merely voidable; lender has no legally enforceable right to recover either principal or interest. *Pinkett v. Credithrift of Am., Inc.*, 430 F. Supp. 113 (N.D. Ga. 1977) (decided prior to 1980 amendment of § 7-3-29).

**Lender may not accelerate unearned interest if it wishes to recover principal and earned interest.** *Bragg v. HFC*, 140 Ga. App. 75, 230 S.E.2d 55 (1976) (decided prior to 1980 amendment of § 7-3-29).

### Insurance

**Insurance charges authorized under former Code 1933, § 25-315(3) do not render loan usurious.** *McDonald v. G.A.C. Fin. Corp.*, 115 Ga. App. 361, 154 S.E.2d 825 (1967).

**Subparagraph (3)(B) applies only to credit insurance.** — O.C.G.A. § 7-3-14(3)(B) applies only to insurance purchased "as security on any loan," i.e., credit insurance. *Dixon v. S & S Loan Serv. of Waycross, Inc.*, 754 F. Supp. 1567 (S.D. Ga. 1990).

**Section does not prohibit writing of level term life insurance on loans made under the Georgia Industrial Loan Act** (see O.C.G.A. § 7-3-1 et seq.). *Mason v. Service Loan & Fin. Co.*, 128 Ga. App. 828, 198 S.E.2d 391 (1973).

**Effect of accelerating debt on insurance coverage.** — In the absence of any requirement that a lender cancel credit insurance coverage upon acceleration of a debt, there is no violation of the Industrial Loan Act (ILA), O.C.G.A. § 7-3-1 et seq., when a lender, pursuant to properly drafted loan documents and in accord with the ILA,

**Insurance (Cont'd)**

accelerates a debt but does not refund insurance premiums on insurance coverage still in effect. *Williams v. Charter Credit Co.*, 179 Ga. App. 721, 347 S.E.2d 635 (1986).

**Late Charges**

**Former Code 1933, § 25-315(4) specified the only penalty** which may be collected for late payment. *Lewis v. Termplan, Inc.*, 124 Ga. App. 507, 184 S.E.2d 473 (1971).

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**Former Code 1933, § 25-315 applied to banks** since it sets maximum loan fee by regulating when fee may be charged. 1980 Op. Att'y Gen. No. 80-116.

**Section incorporated into National Bank Act and Chapter 7-1 of this title.** — Effect of 12 U.S.C. § 85 and § 7-1-292 is incorporation by reference into National Bank Act and Chapter 7-1 of this title, respectively, those provisions of this chapter dealing with interest and fees which can be charged on certain designated types of loans. 1979 Op. Att'y Gen. No. 79-33.

**A bank may again charge loan fees** authorized by O.C.G.A. § 7-3-14(2) if loan with maturity date in excess of six months made pursuant to O.C.G.A. Ch. 3, T. 7 is renewed after it has been in existence in excess of six months. 1982 Op. Att'y Gen. No. 82-43.

**Legislative intent regarding borrower's insurance.** — Language of former Code 1933, § 25-315 made clear the legislative intent that insurance must be for borrower's benefit; borrower's insurance would, therefore, cover not only amount owing on loan, but also any equity borrower might have in property insured. 1963-65 Op. Att'y Gen. p. 131.

**Licensee cannot charge borrower for insurance policy-writing fee.** — No statutory provision permits licensee to charge borrower for policy-writing fee; language of former Code 1933, § 25-315(3) clearly prohibited any charge in connection with insurance obtained as security on a loan other than actual established premium, and former Code 1933, §§ 25-214, 25-216, and

25-313 (see O.C.G.A. § 7-3-15) clearly prohibits any charges other than those set out in this chapter. 1963-65 Op. Att'y Gen. p. 428.

**Late charge not considered interest and fees.** — Late charge under former Code 1933, § 25-315(4), being a penalty assessment for failure to meet payment when due, was not considered as interest and fees and was not limited by 5 percent per month maximum which can be charged as interest and fees under former Code 1933, § 25-315(1) and (2). 1957 Op. Att'y Gen. p. 158.

**"Loan" synonymous with "note."** — "Loan" in this context should be interpreted as synonymous with "note," and thus two 90-day periods may not be cumulated to allow additional loan fee on second renewal. 1980 Op. Att'y Gen. No. 80-116.

**Interest charge for partial 30-day periods permissible.** — So long as interest of 10 percent per annum is not exceeded, banks may charge interest for partial 30-day periods. 1980 Op. Att'y Gen. No. 80-116.

**If a second imposition of fee** permitted by O.C.G.A. § 7-3-14(2) would result in a violation of usury provisions of O.C.G.A. § 7-4-18 such a second imposition would be illegal. 1982 Op. Att'y Gen. No. 82-43.

**Calculation of refund of unearned maintenance charges.** — The calculation of a refund of unearned maintenance charges in connection with the prepayment or refinancing of a loan transaction is to be determined by the "Rule of 78s" as required by O.C.G.A. § 7-3-14(5). 1990 Op. Att'y Gen. No. 90-45.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 45 Am. Jur. 2d, Interest and Usury, § 220 et seq. 54 Am. Jur. 2d, Moneylenders and Pawnbrokers, §§ 9, 20-24.



**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, §§ 293-299, 301, 304, 305.

**ALR.** — Usury: expenses or charges incident to loan of money, 21 ALR 797; 53 ALR 743; 63 ALR 823; 105 ALR 795; 52 ALR2d 703.

Construction, application, and effect of provisions of small loan acts regarding fees, charges, etc., in addition to interest, 143 ALR 1323.

Retrospective application and effect of statutory provision for interest or changed rate of interest, 4 ALR2d 932; 40 ALR4th 147; 41 ALR4th 694.

Usury: expenses or charges incident to loan of money, 52 ALR2d 703.

Taking or charging interest in advance as usury, 57 ALR2d 630.

Construction and application of provision of small loan statute limiting time period for loan contracts, 58 ALR2d 1263.

What is "compound interest" within

meaning of statutes prohibiting the charging of such interest, 10 ALR3d 421.

Right of holder of commercial paper to interest or finance charges applicable to period after acceleration of maturity of obligation because of debtor's default, 63 ALR3d 10.

Validity and construction of provision imposing "late charge" or similar exaction for delay in making periodic payments on note, mortgage, or installment sale contract, 63 ALR3d 50.

Reformation of usurious contract, 74 ALR3d 1239.

Validity and construction of state statute or rule allowing or changing rate of prejudgment interest in tort action, 40 ALR4th 147.

Retrospective application and effect of state statute or rule allowing interest or changing rate of interest on judgments or verdicts, 41 ALR4th 694.

### 7-3-15. Limitation on further charges.

No licensee shall charge, contract for, or receive any other or further amount in connection with any loans authorized by this chapter in addition to those provided in Code Section 7-3-14, except the actual lawful fees paid to a public official or agency of the state for filing, recording, or, on loans over \$100.00, the amount of the lawful premiums, no greater than such fees, actually paid for insurance against the risk of nonrecording or releasing any instrument securing the loan; the court costs and attorney fees authorized by law incurred in the collection of any contract in default; and the actual and reasonable expenses of repossessing, storing, and selling any collateral pledged as security for any contract in default. No licensee shall divide into separate parts any contract for the purpose or with the effect of obtaining charges in excess of those authorized by this chapter. (Ga. L. 1904, p. 79, §§ 10, 12; Civil Code 1910, §§ 3459, 3461; Ga. L. 1920, p. 215, § 13; Code 1933, §§ 25-214, 25-216, 25-313, 25-316; Ga. L. 1935, p. 394, § 2; Ga. L. 1955, p. 431, § 16.)

### JUDICIAL DECISIONS

**Editor's notes.** — In light of subsections (g) and (h) of § 7-3-29, decisions rendered prior to amendment of that section by Ga. L. 1980, p. 1784, §§ 1, 2, have been included in the annotations for this Code section.

**Lender may not contract for any interest or charges not specifically authorized by the Georgia Industrial Loan Act** (see O.C.G.A.

§ 7-3-1 et seq.). General Fin. Corp. v. Sprouse, 577 F.2d 989 (5th Cir. 1978).

**Waiver of homestead exemption did not constitute a further charge** within meaning of former Code 1933, § 25-316. Lowe v. Termplan, Inc., 144 Ga. App. 671, 242 S.E.2d 268 (1978).

**Title fee disbursed to third party consti-**

**tutes an additional charge** which was prohibited by former Code 1933, § 25-316 and thus renders loan contract between the parties null and void. *Kennesaw Fin. Co. v. Mirabelli*, 143 Ga. App. 254, 238 S.E.2d 256 (1977) (decided prior to 1980 amendment to § 7-3-29).

**Notary fees to lender's employee are prohibited charges.** — Where loan company receives benefit from collection of notary fees at least indirectly, in that the job held by an employee is attractive and easier to fill with qualified person by reason of additional compensation or supplement to regular salary in the form of notary fees, notary fees constitute "any other or further amount" under former Code 1933, § 25-316. *Georgia Inv. Co. v. Norman*, 231 Ga. 821, 204 S.E.2d 740 (1974).

**Loan including every legally permissible charge becomes usurious by notary fee.** — Where, after charging borrower every charge legally permissible under terms of Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., a lender disburses \$1.00 of amount loaned to borrower to an employee of lender as a notary public fee, such disbursement, not being permitted by the Act, results in usurious interest being charged to borrower. *Georgia Inv. Co. v. Norman*, 231 Ga. 821, 204 S.E.2d 740 (1974).

**Acceleration of remaining installments, including unearned interest, renders contract void.** — Where contract provides for acceleration upon debtor's default of all remaining installments of loan, which installments include unearned interest, the contract was null and void under former Code 1933, § 25-316. *Anderson v. G.A.C. Fin. Corp.*, 135 Ga. App. 116, 217 S.E.2d 605 (1975) (decided prior to 1980 amendment of § 7-3-29).

Acceleration clause in Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., contract which upon default permits collection of entire balance due on contract without excluding unearned interest is violative of the Act and voids the contract. *Diggs v. Swift Loan & Fin. Co.*, 154 Ga. App. 389, 268 S.E.2d 433 (1980) (decided prior to 1980 amendment of § 7-3-29).

Provision for acceleration of unearned interest is a contract authorizing collection of more than is provided or approved by the Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., and thus authorizes a result contrary to its

terms, and is in violation of the Act; the loan is void. *Frazier v. Courtesy Fin. Co.*, 132 Ga. App. 365, 208 S.E.2d 175 (1974) (decided prior to 1980 amendment of § 7-3-29).

**Loan contract usurious.** — Loan contract providing for eight percent interest to be paid after maturity is not in violation of interest provisions of the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.), but, when combined with acceleration clause, exceeds the sum lawfully allowed to be charged. *Hardy v. G.A.C. Fin. Corp.*, 131 Ga. App. 282, 205 S.E.2d 526, aff'd, 232 Ga. 632, 208 S.E.2d 453 (1974).

Provision in 24-month note authorizing accelerated collection is sufficient to void the obligation. *Lawrimore v. Sun Fin. Co.*, 131 Ga. App. 96, 205 S.E.2d 110 (1974).

**Contract provision authorizing collection of unearned interest voids obligation.** — It makes no difference whether collection of the unearned interest was sought or not; provision in loan agreement authorizing collection of unearned interest alone voids obligation. *Brock v. Liberty Loan Co.*, 135 Ga. App. 62, 217 S.E.2d 389 (1975).

**Refinancing by original lender.** — In a refinancing by an original lender, where both sides must agree to an extension of credit and the lender presumably is not losing profits, there is no reason to depart from the general mandate of O.C.G.A. §§ 7-3-14 and 7-3-15. This chapter provides for "add on" interest, earned uniformly on the entire original amount of the loan, with-out regard to installment reductions in the outstanding balance. *Ford v. Termplan, Inc.*, 528 F. Supp. 1016 (N.D. Ga. 1981).

**Nonfiling insurance premium validly charged.** — See *Pinkston v. Security Fin. Corp.*, 183 Bankr. 986 (Bankr. S.D. Ga. 1995).

**Cited in Securities Inv. Co. v. Pearson**, 111 Ga. App. 761, 143 S.E.2d 36 (1965); *Clark v. Liberty Loan Corp.*, 116 Ga. App. 213, 156 S.E.2d 535 (1967); *Bell v. Loosier of Albany, Inc.*, 137 Ga. App. 50, 222 S.E.2d 839 (1975); *Liberty Loan Corp. v. Childs*, 140 Ga. App. 473, 231 S.E.2d 352 (1976); *Goodwin v. Trust Co.*, 144 Ga. App. 787, 242 S.E.2d 302 (1978); *Gainesville Fin. Servs., Inc. v. McDougal*, 154 Ga. App. 820, 270 S.E.2d 40 (1980); *Clyde v. Liberty Loan Corp.*, 249 Ga. 78, 287 S.E.2d 551 (1982); *Aetna Fin. Co. v. Brown*, 172 Ga. App. 537, 323 S.E.2d 720 (1984).

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**Effect of Uniform Commercial Code on nonrecording insurance premiums.** — Nonrecording insurance premiums, subject otherwise to rate approvals and regulations by insurance department would be lawful after January 1, 1964, provided they do not exceed amount of recording fees set out in former paragraph (5) of § 11-9-403 of Uniform Commercial Code. 1963-65 Op. Att’y Gen. p. 335.

**Licensee may not charge borrower a policy-writing fee.** — No provision in the

Industrial Loan Act, O.C.G.A. § 7-3-15 et seq., permits a licensee to charge borrower a policy-writing fee; the language of § 7-3-14(3) clearly prohibited any charge in connection with insurance obtained as security on a loan other than the actual established premium, and former Code 1933, § 25-316 clearly prohibited any charges other than those set out in the Act. 1963-65 Op. Att’y Gen. p. 428.

RESEARCH REFERENCES

**Am. Jur. 2d.** — 45 Am. Jur. 2d, Interest and Usury, § 222. 54 Am. Jur. 2d, Moneylenders and Pawnbrokers, § 9.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, §§ 293-301, 304, 305.

**ALR.** — Usury: expenses or charges incident to loan of money, 21 ALR 797; 53 ALR 743; 63 ALR 823; 105 ALR 795; 52 ALR2d 703.

Note or other obligation payable on demand for an amount in excess of amount actually loaned as usurious, 127 ALR 460.

Construction, application, and effect of

provisions of small loan acts regarding fees, charges, etc., in addition to interest, 143 ALR 1323.

Usury: expenses or charges incident to loan of money, 52 ALR2d 703.

What is “compound interest” within meaning of statutes prohibiting the charging of such interest, 10 ALR3d 421.

Enforceability of provision in loan commitment agreement authorizing lender to charge standby fee, commitment fee, or similar deposit, 93 ALR3d 1156.

7-3-16. Loans to pay contracts acquired by licensee restricted.

No loan shall be made by any licensee for the purpose of paying all or any part of the amount owed on any note, bill of sale to secure debt, title retention contract, conditional sales contract, or any other similar contract which has been purchased by or assigned or transferred to such licensee for a period of at least 90 days from the date of such purchase or transfer. (Ga. L. 1964, p. 288, § 7.)

RESEARCH REFERENCES

**Am. Jur. 2d.** — 54 Am. Jur. 2d, Moneylenders and Pawnbrokers, § 9.

with conditional sale contract as usury, 143 ALR 238.

**ALR.** — Finance charge in connection

7-3-17. Payment before maturity; refund of prepaid interest; continuing insurance.

Notwithstanding the provisions of any contract to the contrary, a borrower may at any time prepay all or any part of the unpaid balance to become payable under any installment contract. If the borrower pays the



time balance in full before maturity, the licensee shall refund to him a portion of the prepaid interest, calculated in complete even months (odd days omitted), as follows: The amount of the refund shall represent at least as great a proportion of the total interest as the sum of the periodical time balance after the date of prepayment bears to the sum of all periodical time balances under the schedule of payments in the original contract. Where the amount of the refund due to anticipation of payment is less than \$1.00, no refund need be made. If the borrower has been required to purchase other than insurance coverage in a blanket policy when he has paid no acquisition cost, he shall have the option to continue such insurance in force for the balance of the policy period, with all rights transferred to the borrower or his assigns, in which event no refund of insurance premiums shall be made to him. (Ga. L. 1955, p. 431, § 17.)

**Law reviews.** — For article discussing methods of computation of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978).

### JUDICIAL DECISIONS

**Section compensates lender for profits lost when loan prepaid.** — In enacting O.C.G.A. § 7-3-17, the General Assembly made a specific exception to the general limitation of O.C.G.A. § 7-3-14 on interest and to the general prohibition in O.C.G.A. § 7-3-15 on further charges, with a view toward compensating a lender for lost profits when a debtor voluntarily repays the debtor's loan. *Ford v. Termplan, Inc.*, 528 F. Supp. 1016 (N.D. Ga. 1981).

**Section applicable to prepaid interest and insurance but makes no mention of loan fee charges.** — Georgia law provides a specific refund system upon prepayment of loans. It applies to prepaid interest and insurance charges but makes no mention of a loan fee charge. *Jones v. Community Loan & Inv. Corp.*, 526 F.2d 642 (5th Cir.), on rehearing, 544 F.2d 1228 (5th Cir. 1976), cert. denied, 431 U.S. 934, 97 S. Ct. 2642, 53 L. Ed. 2d 250 (1977).

**Rule of 78's violates this section.** — Given the purpose of the Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., the strict construction which Georgia courts have applied to it, its general limitation on interest rates charged on such small loans in O.C.G.A. § 7-3-14, its general prohibition in O.C.G.A. § 7-3-15 on charges in excess of those authorized, and the commission regulations, which, according to accepted interpretive principles, appear to exclude anything but

pro rata computations of interest on rebates and refinancing, it would seem that the use of the Rule of 78's to compute the interest rebate and the refinancing of a loan agreement pursuant to that Act violates O.C.G.A. § 7-3-17. *Ford v. Termplan, Inc.*, 528 F. Supp. 1016 (N.D. Ga. 1981).

**Determination of refund by Rule of 78's is permitted.** — Computation of refunds of unearned interest according to Rule of 78's where borrower pays time balance in full before maturity is permitted. *Pollard v. Congress Fin. Corp.*, 153 Ga. App. 357, 265 S.E.2d 296 (1980). (But see, *Ford v. Termplan, Inc.*, 528 F. Supp. 1016 (N.D. Ga. 1981)).

**Rule of 78's applicable in refinancing situation.** — The one statute the Legislature has written to allow for use of the Rule of 78's in situations involving the prepayment of all or any part of the unpaid balance of an installment contract prior to maturity should be held applicable where a borrower retires one note held by a particular lender by using the proceeds of a second note from the same lender. The Legislature's decision to allow more than a pro rata loss of interest in prepayment situations indicates its desire to allow a similar loss by the borrower in a refinancing situation since both transactions are initiated by the borrower and are evidences of the borrower's failure to fulfill the borrower's contractual obligation to repay

the lender pursuant to the initial installment contract. That failure has caused the Legislature to exact a penalty against the borrower in the form of allowing a creditor's use of the Rule of 78's in a prepayment situation, and in the absence of a clear statement to the contrary, the same penalty should be exacted against the refinancing borrower. *Simpson v. Termplan, Inc.*, 535 F. Supp. 36 (N.D. Ga. 1981). (But see, *Ford v. Termplan, Inc.*, 528 F. Supp. 1016 (N.D. Ga. 1981)).

The Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., authorizes the lender to use the Rule of 78's to compute interest rebates in refinancing cases, and the Act does not require lenders to compute such rebates on a pro rata basis. *Varner v. Century Fin. Corp.*, 253 Ga. 27, 317 S.E.2d 178 (1984). (But see, *Ford v. Termplan, Inc.*, 528 F. Supp. 1016 (N.D. Ga. 1981)).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 54 Am. Jur. 2d, Moneylenders and Pawnbrokers, § 9.

**ALR.** — Personal liability for repayment of loan or advance under contract which ex-

**Nothing less than refund of all unearned interest permitted where creditor accelerates.** — Where there is not a prepayment the Rule of 78's cannot be used to compute interest refund and where acceleration was made at half-way point in contract but less than 50 percent of total interest charged was refunded, nothing less than a refund of all unearned interest where creditor accelerates can be permitted. *Garrett v. G.A.C. Fin. Corp.*, 129 Ga. App. 96, 198 S.E.2d 717 (1973).

**Cited in** *Brown v. Quality Fin. Co.*, 112 Ga. App. 369, 145 S.E.2d 99 (1965); *Cook v. First Nat'l Bank*, 130 Ga. App. 587, 203 S.E.2d 870 (1974); *Harlow v. Walton Loan Corp.*, 174 Ga. App. 311, 329 S.E.2d 616 (1985).

pressly provides for repayment from proceeds of crop or other property and contains no express promise for repayment otherwise, 111 ALR 1062.

#### 7-3-18. Delivery of copy of contract or itemized statement; receipts.

At the time the loan is made, each licensee under this chapter shall deliver to the borrower or, if there are two or more, to one of them a copy of the loan contract or a written itemized statement in the English language showing in clear terms the date and amount of the loan, a schedule of the payments or a description thereof, the type of security for the loan, the licensee's name and address, the actual cash advanced to or on behalf of the borrower, the amount of each class of insurance carried and the premiums paid thereon, and the amount of interest and fees. Each licensee shall give a receipt for every cash payment made. (Ga. L. 1904, p. 79, §§ 6, 7; Civil Code 1910, § 3454; Ga. L. 1920, p. 215, § 14; Code 1933, §§ 25-209, 25-314; Ga. L. 1955, p. 431, § 19.)

#### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the provisions, decisions under former Acts 1920, p. 222 are included in the annotations for this section.

**Act is applicable to loan contracts, not merely notes.** — Statutory language of the Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., refers to loan contracts and

not merely notes. *General Fin. Corp. v. Sprouse*, 577 F.2d 989 (5th Cir. 1978).

**Substantial compliance with section may suffice.** — Although renewal note was not made out with as much particularity as was required by Acts 1920, p. 222, it may nevertheless affirmatively appear that there was substantial compliance with that Act and

that the borrowers had been furnished relevant information. *Dean v. Avco Fin. Servs., Inc.*, 128 Ga. App. 256, 196 S.E.2d 415 (1973) (decided under Acts 1920, p. 222).

**Burden was on lender to show full compliance** with terms of Acts 1920, p. 222, otherwise the transaction was void. *Dean v. Avco Fin. Servs., Inc.*, 128 Ga. App. 256, 196 S.E.2d 415 (1973) (decided under Acts 1920, p. 222).

**Burden is upon lender to bring in any other writings.** — If there were other writings between parties, it is incumbent upon lender to come up with them or suffer judgment. *HFC v. Rogers*, 137 Ga. App. 315, 223 S.E.2d 462 (1976).

**Inconsistency between state disclosure requirements and Truth-in-Lending Act.** — State law is inconsistent with requirements of Truth-in-Lending Act, 15 U.S.C.S. § 1601 et seq., to extent that it requires creditor to make disclosures different from the federal requirements with respect to form or terminology. *Gresham v. Termplan, Inc.*, 480 F. Supp. 149 (N.D. Ga. 1979), aff'd, 648 F.2d 312 (5th Cir. 1981).

State law is inconsistent with requirements of truth in lending law if it requires creditor to make disclosures different from those required by federal law as to form, content, terminology or time of delivery. *Blalock v. Aetna Fin. Co.*, 511 F. Supp. 33 (N.D. Ga. 1980).

**Mingling of state disclosures and federal regulations.** — Mingling of inconsistent state disclosures with terminology required by federal regulations is not permissible. *Gresham v. Termplan, Inc.*, 480 F. Supp. 149 (N.D. Ga. 1979), aff'd, 648 F.2d 312 (5th Cir. 1981).

**Permissible method for making disclosures under inconsistent state and federal requirements.** See *Gresham v. Termplan, Inc.*, 480 F. Supp. 149 (N.D. Ga. 1979), aff'd, 648 F.2d 312 (5th Cir. 1981).

**Clerical error in loan document as to insurance.** — Clerical error on loan document as to nature of insurance did not violate Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., where loan document expressly provided that agreement consisted of both loan document and disclosure statement. *Jenkins v. Commercial Credit Plan, Inc.*, 204 Ga. App. 444, 419 S.E.2d 484, cert. denied, 204 Ga. App. 922, 419 S.E.2d 484 (1992).

**Cited in** *Colter v. Consolidated Credit Corp.*, 115 Ga. App. 408, 154 S.E.2d 713 (1967); *Colter v. Consolidated Credit Corp.*, 116 Ga. App. 520, 157 S.E.2d 812 (1967); *Patman v. General Fin. Corp.*, 128 Ga. App. 836, 198 S.E.2d 371 (1973); *Cullers v. Home Credit Co.*, 130 Ga. App. 441, 203 S.E.2d 544 (1973); *Dukes v. HFC*, 137 Ga. App. 474, 224 S.E.2d 107 (1976); *Hawkins v. HFC*, 139 Ga. App. 525, 229 S.E.2d 13 (1976); *Freeman v. Decatur Loan & Fin. Corp.*, 140 Ga. App. 682, 231 S.E.2d 409 (1976); *Carter v. Credithrift of Am., Inc.*, 143 Ga. App. 256, 238 S.E.2d 257 (1977); *Southern Discount Co. v. Heide*, 144 Ga. App. 481, 241 S.E.2d 599 (1978); *Marshall v. Fulton Nat'l Bank*, 145 Ga. App. 190, 243 S.E.2d 266 (1978); *Shaver v. Aetna Fin. Co.*, 148 Ga. App. 740, 252 S.E.2d 684 (1979); *Ector v. Southern Dist. Co.*, 499 F. Supp. 284 (N.D. Ga. 1980); *Scroggins v. Whitfield Fin. Co.*, 157 Ga. App. 655, 278 S.E.2d 411 (1981); *Gresham v. Termplan, Inc.*, 648 F.2d 312 (5th Cir. 1981).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 54 Am. Jur. 2d, Moneylenders and Pawnbrokers, § 16.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, §§ 302, 309.

### 7-3-19. Tax on interest — Levy; penalty for tax to charges.

(a) In addition to all other taxes, fees, license fees, or other charges now or hereafter levied or assessed, there is levied a tax of 3 percent on the total amount of interest on any loan collected by any person licensed under this chapter from any borrower to whom such licensee has made a loan.



(b) Said tax is levied and assessed against the person so licensed and shall be paid by such person and shall not be added in any manner as an additional fee or charge against the borrower. Any person licensed under this chapter who adds such tax in any manner as an additional fee or charge against the borrower shall be liable for the recovery of triple the amount of such charge by action against the lender in any court of competent jurisdiction.

(c) As used in this Code section, the term “interest collected” means the gross amount of interest charged and collected on loan contracts, less any amount of unearned interest refunded to borrowers and such interest on such portion of uncollectable accounts that are charged off as bad debts by the licensee; except that, for those licensees whose records are kept on an accrual basis, the 3 percent tax levied in subsection (a) of this Code section shall be remitted on such portion of the interest as accrues during the taxable month. (Ga. L. 1955, Ex. Sess., p. 57, § 1; Ga. L. 1956, p. 86, § 2; Ga. L. 1997, p. 143, § 7.)

JUDICIAL DECISIONS

**Cited in** Bell v. Loosier of Albany, Inc., 137 Ga. App. 50, 222 S.E.2d 839 (1975).

RESEARCH REFERENCES

- Am. Jur. 2d.** — 45 Am. Jur. 2d, Interest and Usury, § 222.

**ALR.** — Constitutionality of statutes imposing duty on borrower to collect and pay
- over the tax imposed on the lender or owner of the obligations, 60 ALR 742.

Classification of money lenders for purposes of taxation, 93 ALR 209.

**7-3-20. Tax on interest — Payment; inspection of records; rules and regulations.**

The tax provided for in Code Section 7-3-19 shall be remitted to the Commissioner on or before the twentieth day of each month for the preceding calendar month. The Commissioner and his authorized agents and employees shall have the right to inspect all records of any person so licensed, and the Commissioner is authorized to promulgate rules and regulations relative to the enforcement of Code Section 7-3-19, this Code section, and Code Section 7-3-21. (Ga. L. 1955, Ex. Sess., p. 57, § 2; Ga. L. 1956, p. 86, § 2; Ga. L. 1975, p. 1247, § 2; Ga. L. 1989, p. 14, § 7; Ga. L. 2004, p. 631, § 7.)

**The 2004 amendment,** effective May 13, 2004, part of an Act to revise, modernize, and correct the Code, substituted “Code Section 7-3-19, this Code section, and Code

Section 7-3-21” for “Code Sections 7-3-19 through 7-3-21” at the end of this Code section.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 54 Am. Jur. 2d, Moneylenders and Pawnbrokers, § 9.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, § 275.

### 7-3-21. Tax on interest — Penalties for late or fraudulent tax payments.

In the event any person fails or refuses to remit the tax required by Code Sections 7-3-19 and 7-3-20 within the time prescribed, there shall be added to the tax a penalty equivalent to 25 percent of the tax but in no case shall the penalty so added be less than \$5.00. In the event any person fraudulently remits the incorrect tax, there shall be added to the tax a penalty equivalent to 50 percent of the tax but in no case shall the penalty so added be less than \$5.00. The amounts so added as penalties shall be collected as a part of the tax. (Ga. L. 1955, Ex. Sess., p. 57, § 3.)

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 54 Am. Jur. 2d, Moneylenders and Pawnbrokers, § 18 et seq.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, § 313.

### 7-3-22. Examinations, investigations, and hearings.

(a) For the purpose of discovering violations of this chapter, the Commissioner or his duly authorized representative may from time to time examine the books, accounts, papers, and records of:

(1) Any licensee;

(2) Any person who advertises for, solicits, or holds himself out as willing to make loans in amounts of \$3,000.00 or less; or

(3) Any person whom the Commissioner has reason to believe is violating or is about to violate the provisions of this chapter.

(b) The Commissioner may subpoena witnesses, books, accounts, papers, and records; administer oaths; hold hearings; and take testimony under oath in conducting examinations and hearings authorized under this chapter.

(c) The cost of any such examination, investigation, or hearing, in the discretion of the Commissioner, may be charged to the licensee or person examined subject to review by the superior court under Code Section 7-3-27. The examinations, investigations, or hearings provided for in this Code section may be conducted at the state capitol or, in the discretion of the Commissioner, in the county wherein the business of the licensee is located or where the person required to have a license under this chapter is engaging in the business of making loans or elsewhere, upon the consent of the parties involved. (Ga. L. 1904, p. 79, § 8; Civil Code 1910, § 3456; Ga. L. 1920, p. 215, § 10; Code 1933, §§ 25-211, 25-310; Ga. L. 1955, p. 431,

§ 11; Ga. L. 1963, p. 370, § 3; Ga. L. 1975, p. 393, § 1; Ga. L. 1989, p. 14, § 7.)

### OPINIONS OF THE ATTORNEY GENERAL

**Scope of authority.** — Former Code 1933, § 25-310 (see O.C.G.A. § 7-3-22) empowers Commissioner to investigate loans and business of anyone violating provisions of the Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.). 1948-49 Op. Att'y Gen. p. 15.

**Exercise of authority discretionary.** — It was the intention of the legislature to place

exercise of this authority within the discretion of Commissioner; it was clearly not mandatory upon the Commissioner to make such investigation, since former Code 1933, § 25-310 (see O.C.G.A. § 7-3-22) stated that the Commissioner "may . . . investigate." 1948-49 Op. Att'y Gen. p. 15.

### 7-3-23. Cease and desist orders; enjoining violations.

In the event the Commissioner shall find cause to believe that any person is violating this chapter or the rules and regulations promulgated by the Commissioner pursuant to this chapter, he shall make such investigation and have such hearings, before him or such person as he designates, as will permit him to determine the facts and then may issue a cease and desist order if he so determines. If such cease and desist order is thereafter violated by the person against whom it is issued, such violation shall constitute a public nuisance; and the Commissioner is authorized to seek, and the superior courts shall grant, injunctions against such person's further violating this chapter or the lawful rules and regulations promulgated by the Commissioner pursuant to this chapter. Such action for injunction may be maintained notwithstanding the existence of other legal remedies or the pendency or successful completion of a criminal prosecution as for a misdemeanor. (Ga. L. 1957, p. 331, § 2; Ga. L. 1989, p. 14, § 7; Ga. L. 1997, p. 143, § 7.)

### 7-3-24. Suspension or revocation of license — Grounds; procedure; effect of loss of license on contracts.

(a) The Commissioner, upon ten days' written notice in the form of a show cause order to the licensee stating his contemplated action and in general the ground therefor and after giving the licensee a reasonable opportunity to be heard, subject to the right to review provided in Code Section 7-3-27, may by order in writing suspend or revoke any license issued under this chapter if the Commissioner shall find that:

(1) The licensee has failed to pay the annual license fee or any fee required under this chapter; or

(2) The licensee has violated any provision of this chapter or any rule or regulation promulgated by the Commissioner under this chapter or has violated the terms of any cease or desist order entered by the Commissioner under Code Section 7-3-23.



(b) Any such suspension or revocation shall not become final pending and subject to the right of review provided in Code Section 7-3-27, but the court shall have and is granted power to enter such order as justice shall require pending hearing of such appeal. The court upon such appeal may tax the cost, including the cost of the hearing before the Commissioner, against the losing party.

(c) No suspension, revocation, relinquishment, or expiration of any license shall invalidate, impair, or affect the legality or obligations of any preexisting contracts or prevent the enforcement and collection thereof. (Ga. L. 1904, p. 79, §§ 4, 9, 15; Ga. L. 1920, p. 215, § 6; Code 1933, §§ 25-212, 25-217, 25-305, 25-306; Ga. L. 1955, p. 431, § 12; Ga. L. 1963, p. 370, § 4; Ga. L. 1989, p. 14, § 7.)

### JUDICIAL DECISIONS

Cited in *Bentley v. C. & S. Loans, Inc.*, 109 Ga. App. 218, 135 S.E.2d 900 (1964).

### OPINIONS OF THE ATTORNEY GENERAL

**Specific grounds or cause for revocation or suspension of a license.** — See 1963-65 Op. Att'y Gen. p. 13.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 51 Am. Jur. 2d, Licenses and Permits, § 88 et seq.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, §§ 283, 284, 306.

### 7-3-25. Suspension or revocation of license — Unreasonable collection tactics.

(a) Any license shall be subject to suspension or revocation, after notice and hearing as provided for in Code Section 7-3-24, in the event unreasonable collection tactics shall be willfully used by the licensee or any employee or agent thereof. Unreasonable collection tactics shall include, but not be limited to, any conduct by the licensee or any employee or agent thereof which:

- (1) Causes the borrower or any member of his family to suffer bodily injury or physical harm;
- (2) Constitutes a willful or intentional trespass by force of the borrower's home or his personal property without process of law;
- (3) Holds up the borrower to public ridicule or unreasonably degrades him in the presence of his neighbors or business associates;
- (4) Involves use of printed material which simulates or resembles a summons, warrant, or other legal process; or

(5) Although otherwise lawful, occurs at an unreasonable hour of the night. Attempts to make collections by means of personal visits, telephone calls, and the like shall be deemed to occur at an unreasonable hour of the night if they occur between the hours of 10:00 P.M. and 5:00 A.M.

(b) Any order or decision of the Commissioner on the matter of suspension or revocation shall be subject to review as provided for in Code Section 7-3-27. (Ga. L. 1964, p. 288, § 6; Ga. L. 1989, p. 14, § 7; Ga. L. 1997, p. 143, § 7.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 51 Am. Jur. 2d, Licenses and Permits, § 88 et seq.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, §§ 283, 284.

**ALR.** — Usury: expenses or charges incident to loan of money, 21 ALR 797; 53 ALR 743; 63 ALR 823; 105 ALR 795; 52 ALR2d 703.

Usury: expenses or charges incident to loan of money, 52 ALR2d 703.

Use of criminal process to collect debt as abuse of process, 27 ALR3d 1202.

Unsolicited mailing, distribution, house call, or telephone call as invasion of privacy, 56 ALR3d 457.

Liability of creditor for excessive attachment or garnishment, 56 ALR3d 493.

Recovery by debtor, under tort of intentional or reckless infliction of emotional distress for damages resulting from debt collection methods, 87 ALR3d 201.

Validity, construction, and application of state statutes prohibiting abusive or coercive debt collection practices, 87 ALR3d 786.

Method employed in collecting debt due client as ground for disciplinary action against attorney, 93 ALR3d 880.

Validity, construction, and application of state criminal statute forbidding use of telephone to annoy or harass, 95 ALR3d 411.

What constitutes "debt" for purposes of Fair Debt Collection Practices Act (15 USCA § 1692a(5)), 159 ALR Fed. 121.

#### 7-3-26. Probation and civil penalties for violations.

In addition to all other penalties provided for under this chapter, the Commissioner shall have authority to place any licensee on probation for a period of time not to exceed one year for each and every act or violation of this chapter or of the rules and regulations of the Commissioner and may subject such licensee to a monetary penalty of up to \$1,000.00 for each and every act or violation of this chapter or of the rules and regulations of the Commissioner. If the licensee knew or reasonably should have known he was in violation of this chapter or the rules and regulations of the Commissioner, the monetary penalty provided for in this Code section may be increased to an amount up to \$5,000.00 for each and every act or violation. (Ga. L. 1975, p. 1247, § 1; Ga. L. 1989, p. 14, § 7; Ga. L. 1997, p. 143, § 7.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 54 Am. Jur. 2d, Moneylenders and Pawnbrokers, § 18 et seq.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, § 313.

**7-3-27. Judicial review of Commissioner's decisions.**

The decision of the Commissioner in granting or refusing to grant a license and in revoking or suspending such license and in any other order or decision authorized in this chapter shall be final, conclusive, and binding as to all determinations of fact made by him; but any applicant or licensee who deems himself aggrieved may have such decision reviewed under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," for the review of contested cases. (Ga. L. 1955, p. 431, § 13; Ga. L. 1982, p. 3, § 7; Ga. L. 1989, p. 14, § 7.)

**RESEARCH REFERENCES**

**C.J.S.** — 73A C.J.S., Public Administrative Bodies and Procedure, § 172 et seq. appeal from a judicial decision affecting his or its order or decision, 117 ALR 216.

**ALR.** — Right of public officer or board to

**7-3-28. Code Section 7-4-4 not repealed.**

Nothing in this chapter shall be construed as repealing Code Section 7-4-4. (Ga. L. 1955, p. 431, § 22.)

**7-3-29. Criminal penalties; void loans; civil penalty to borrower for violation; violation not subject of class action; defense of good faith; limitation on remedies for voidness.**

(a) Any person who shall make loans under this chapter without first obtaining a license or who shall make a false statement under oath in an application for a license under this chapter or who shall do business while the license of such person under this chapter is suspended or revoked shall be guilty of a misdemeanor; and any contract made under this chapter by such person shall be null and void.

(b) Except as otherwise provided in this chapter, any duly licensed lender who fails to comply with this chapter in connection with a loan under this chapter shall be liable to the borrower or borrowers thereon for a single penalty in an amount equal to twice the amount of all interest and loan fees charged said borrower or borrowers on the most recent loan made by the lender to said borrower or borrowers; provided, however, that the liability under this subsection shall not be less than \$100.00.

(c) A lender duly licensed under this chapter has no liability under subsection (b) of this Code section if, within 15 days after discovering an error or violation and prior to the institution of an action under this Code section or the receipt of written notice of the error or violation, the lender notifies the person concerned of the error or violation and makes whatever adjustments in the appropriate account are necessary to ensure that such



person will not be required to pay charges in excess of those permitted by this chapter.

(d) A lender may not be held liable in any action brought under this Code section for a violation of this chapter if the lender shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide clerical or typographical error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(e) A claim of violation of this chapter against a duly licensed lender may be asserted in an individual action only and may not be the subject of a class action under Code Section 9-11-23 or any other provision of law. A claim of violation of this chapter against an unlicensed lender may be asserted in a class action under Code Section 9-11-23 or any other provision of law.

(f) If a contract is made in good faith in conformity with an interpretation of this chapter by the appellate courts of this state or in a rule or regulation officially promulgated by the Commissioner after public hearings, no provision in this Code section imposing any penalty shall apply, notwithstanding that, after such contract is made, such rule or regulation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(g) Any lender duly licensed under this chapter who shall knowingly and willfully with intent to defraud a borrower make a contract in violation of this chapter shall be guilty of a misdemeanor, and the contract so made shall be null and void.

(h) No person may, more than one year after April 9, 1980, assert or contend offensively or defensively in any court that a contract predating April 9, 1980, is null and void or is illegal, void, invalid, or not good consideration for a renewal or refinanced contract. This subsection is a statute of repose and limitation, barring such remedies, and only such remedies, as of that date; provided, however, that after that date a borrower or borrowers on a contract predating April 9, 1980, shall be entitled to the appropriate penalty provided under subsections (a) through (g) of this Code section, but such right to said penalty shall not in any way adversely affect the validity of any renewal or refinanced contract. (Ga. L. 1904, p. 79, § 14; Ga. L. 1920, p. 215, §§ 13, 17, 18; Code 1933, §§ 25-217, 25-313, 25-317, 25-9902; Ga. L. 1935, p. 394, § 2; Ga. L. 1955, p. 431, § 20; Ga. L. 1978, p. 1033, § 1; Ga. L. 1980, p. 1784, §§ 1, 2; Ga. L. 1989, p. 14, § 7; Ga. L. 2004, p. 60, § 1.)

**The 2004 amendment**, effective May 1, 2004, in subsection (e), inserted “against a duly licensed lender” in the first sentence and added the second sentence.

**Law reviews.** — For article surveying 1976 to 1977 developments in application of the Industrial Loan Act, see 29 Mercer L. Rev. 41

(1977). For article surveying Georgia cases in the area of trial practice and procedure from June 1977 through May 1978, see 30 Mercer L. Rev. 239 (1978). For article discussing methods of computation of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978). For

article surveying Georgia cases in the area of commercial law from June 1979 through May 1980, see 32 Mercer L. Rev. 11 (1980). For survey article on commercial law, see 34 Mercer L. Rev. 31 (1982).

For comment on Georgia Inv. Co. v. Norman, 231 Ga. 821, 204 S.E.2d 740 (1974), see 26 Mercer L. Rev. 321 (1974).

**Cross references.** — Illegal payday loans, § 16-17-1 et seq.

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION ACCELERATION OF INTEREST

##### General Consideration

**Editor's notes.** — In light of the similarity of the provisions, and in light of subsection (h) of this section, decisions rendered prior to amendment of this section by Ga. L. 1980, p. 1784, §§ 1, 2 have been retained in the annotations. *Moore v. Beneficial Fin. Co.*, 158 Ga. App. 535, 281 S.E.2d 293 (1981).

**Construction.** — Forfeitures and penalties are not favored and statutes relating to them must be strictly construed, and in manner as favorable to person against whom forfeiture or penalty would be exacted as is consistent with fair principles of interpretation. *Moore v. Beneficial Fin. Co.*, 158 Ga. App. 535, 281 S.E.2d 293 (1981).

This law, being in derogation of common law, must be strictly construed. *Georgia Inv. Co. v. Norman*, 231 Ga. 821, 204 S.E.2d 740 (1974).

Georgia courts have strictly construed the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.), since its provisions are in derogation of common law. *Landmark Fin. Corp. v. Cox*, 2 Bankr. 739 (S.D. Ga. 1980).

**Section does not discourage judicial or other interpretation of chapter.** — O.C.G.A. § 7-3-29 evinces a recognition on the part of the General Assembly that the Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., is ambiguous in certain sections. It in no way discourages judicial or other valid authority from seeking interpretations of that Act which further its purpose, despite prior inconsistent interpretations. *Ford v. Termplan, Inc.*, 528 F. Supp. 1016 (N.D. Ga. 1981).

**Contracts violating act are null and void.** — As originally enacted, this section provided that contracts violating this act were null and void. *Landmark Fin. Corp. v. Cox*, 2 Bankr. 739 (S.D. Ga. 1980).

The 1978 additions to the penalty provi-

sion did not eliminate the null and void language. In describing the purpose of these additions, the General Assembly stated that the former provisions (see O.C.G.A. § 7-3-29(f)) were intended to exempt from certain penalties contracts made in reliance upon certain rules, regulations, or interpretations of the act. *Landmark Fin. Corp. v. Cox*, 2 Bankr. 739 (S.D. Ga. 1980).

**Recovery of principal in action on "null and void" loan contract.** — A lender as licensee may, under this chapter, recover principal amount of loan in action solely on loan contract when such contract is considered "null and void" under this section as a result of inclusion of usurious amount of interest even though lender does not seek recovery of principal in cause of action for money had and received. *United States Life Credit Corp. v. Johnson*, 248 Ga. 852, 287 S.E.2d 1 (1982).

**"Null and void" provision does not work penalty of forfeiture** of principal as well as interest. *Moore v. Beneficial Fin. Co.*, 158 Ga. App. 535, 281 S.E.2d 293 (1981).

**The former provisions (see O.C.G.A. § 7-3-29(f)) did not bear upon method of enforcement** but rather conforms with general purpose of penalty provision to deter lender abuse. *Landmark Fin. Corp. v. Cox*, 2 Bankr. 739 (S.D. Ga. 1980).

**Chapter is applicable to loan contracts, not merely notes.** — Statutory language of the Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., refers to loan contracts and not merely notes. *General Fin. Corp. v. Sprouse*, 577 F.2d 989 (5th Cir. 1978).

**Subsection (c) of section cannot be retroactively applied** to sanction loan fees which are excessive and which were contained in loan contracts made before the March 14, 1978, effective date of section. *Sanders v. Liberty Loan Corp.*, 153 Ga. App. 859, 267

S.E.2d 286 (1980), overruled on another point, *FinanceAmerica Corp. v. Drake*, 154 Ga. App. 811, 270 S.E.2d 449 (1980).

**Interaction of Chapter and Truth-in-Lending Act.** — Industrial Loan Act penalties do not condition or limit application of federal Truth-in-Lending Act, 15 U.S.C.S. § 1601 et seq. *Williams v. Public Fin. Corp.*, 609 F.2d 1179 (5th Cir. 1980).

Industrial Loan Act and federal Truth-in-Lending Act, 15 U.S.C.S. § 1601 et seq., provide separate remedies for separate wrongs. The former limits what a lender subject to its provisions can charge for use of its money; the latter is designed to penalize and deter an independent wrong arising from nondisclosure. *Williams v. Public Fin. Corp.*, 609 F.2d 1179 (5th Cir. 1980).

Lenders violating Industrial Loan Act, (see O.C.G.A. § 7-3-1 et seq., and federal Truth-in-Lending Act, 15 U.S.C.S. § 1601 et seq., are subject to penalties of both. *Williams v. Public Fin. Corp.*, 609 F.2d 1179 (5th Cir. 1980).

**Charge of notary fee is a violation of this chapter** and entitles borrower to have contract declared null and void. *Motor Fin. Co. v. Harris*, 150 Ga. App. 762, 258 S.E.2d 628 (1979).

**Violation of chapter's regulations subject lender to administrative penalties; loan remains enforceable.** — Loans which violate the Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., are void under this section; United States Courts of Appeals have held that violations of the regulations subject lender only to administrative penalties, and that loan remains enforceable. *Robinson v. Central Loan & Fin. Corp.*, 609 F.2d 170 (5th Cir. 1980) (decided prior to 1980 amendment of this section).

**Borrower may only recover money paid which exceeds actual cash advance.** — Borrower may only recover moneys paid to lender under contracts violative of the Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., in excess of cash actually advanced to borrower. *Motor Fin. Co. v. Harris*, 150 Ga. App. 762, 258 S.E.2d 628 (1979) (decided prior to 1980 amendment of this section).

**No recovery permitted on loan which is usurious on its face.** — If note or loan contract made under this chapter shows on its face that it is infected with usury it is absolutely void and there can be no recovery

on it. *Robinson v. Colonial Dist. Co.*, 106 Ga. App. 274, 126 S.E.2d 824 (1962) (decided prior to 1980 amendment of this section).

**Amendment of complaint.** — Where creditor demanded usurious interest, amendment to its complaint does not erase objection of usuriousness. *Liberty Loan Corp. v. Childs*, 140 Ga. App. 473, 231 S.E.2d 352 (1976), cert. dismissed, 239 Ga. 220, 236 S.E.2d 373 (1977).

Good faith offer by lender suing on loan which violated this chapter to amend complaint to correct excessive time price differential, had no effect on penalty provisions. *Douglas v. Dixie Fin. Corp.*, 139 Ga. App. 251, 228 S.E.2d 144 (1976).

**Forfeiture of interest, but not principal.** — Lender who violates the Georgia Industrial Loan Act (see O.C.G.A. § 7-3-1 et seq.) shall forfeit all interest and other charges, but not principal sum advanced to borrower. *Southern Dist. Co. v. Ector*, 246 Ga. 30, 268 S.E.2d 621 (1980); *United States Life Credit Corp. v. Johnson*, 161 Ga. App. 864, 290 S.E.2d 280 (1982).

**Forfeiture of interest and other charges may be avoided.** *Southern Dist. Co. v. Ector*, 246 Ga. 30, 268 S.E.2d 621 (1980) (decided prior to 1980 amendment of this section).

**Cited in Securities Inv. Co. v. Pearson**, 111 Ga. App. 761, 143 S.E.2d 36 (1965); *Brown v. Quality Fin. Co.*, 112 Ga. App. 369, 145 S.E.2d 99 (1965); *Coile v. Finance Co. of Am.*, 221 Ga. 863, 148 S.E.2d 328 (1966); *Community Fin. Co. v. Lloyd*, 114 Ga. App. 230, 150 S.E.2d 845 (1966); *Colter v. Consolidated Credit Corp.*, 115 Ga. App. 408, 154 S.E.2d 713 (1967); *Colter v. Consolidated Credit Corp.*, 116 Ga. App. 520, 157 S.E.2d 812 (1967); *Lewis v. Termplan, Inc.*, 124 Ga. App. 507, 184 S.E.2d 473 (1971); *Abrams v. Commercial Credit Plan, Inc.*, 128 Ga. App. 520, 197 S.E.2d 384 (1973); *Patman v. General Fin. Corp.*, 128 Ga. App. 836, 198 S.E.2d 371 (1973); *Mason v. Service Loan & Fin. Co.*, 128 Ga. App. 828, 198 S.E.2d 391 (1973); *Roberts v. Allied Fin. Co.*, 129 Ga. App. 10, 198 S.E.2d 416 (1973); *Garrett v. G.A.C. Fin. Corp.*, 129 Ga. App. 96, 198 S.E.2d 717 (1973); *Cullers v. Home Credit Co.*, 130 Ga. App. 441, 203 S.E.2d 544 (1973); *Cook v. First Nat'l Bank*, 130 Ga. App. 587, 203 S.E.2d 870 (1974); *Sellers v. Alco Fin., Inc.*, 130 Ga. App. 769, 204 S.E.2d 478 (1974); *Gray v. Quality Fin. Co.*, 130 Ga.



**General Consideration (Cont'd)**

App. 762, 204 S.E.2d 483 (1974); Lawrimore v. Sun Fin. Co., 131 Ga. App. 96, 205 S.E.2d 110 (1974); Hardy v. G.A.C. Fin. Corp., 131 Ga. App. 282, 205 S.E.2d 526 (1974); G.A.C. Fin. Corp. v. Hardy, 232 Ga. 632, 208 S.E.2d 453 (1974); Hobbist Fin. Corp. v. Spivey, 135 Ga. App. 353, 217 S.E.2d 613 (1975); Carreker v. National Diversified, Inc., 135 Ga. App. 511, 218 S.E.2d 117 (1975); Hughes Motor Co. v. First Nat'l Bank, 136 Ga. App. 295, 220 S.E.2d 782 (1975); HFC v. Raven, 136 Ga. App. 424, 221 S.E.2d 488 (1975); Dukes v. HFC, 137 Ga. App. 474, 224 S.E.2d 107 (1976); Moore v. American Fin. Sys., 236 Ga. 610, 225 S.E.2d 17 (1976); Creditthrift of Am., Inc. v. Mason, 143 Ga. App. 793, 240 S.E.2d 158 (1977); Southern Dist. Co. v. Heide, 144 Ga. App. 481, 241 S.E.2d 599 (1978); Marshall v. Fulton Nat'l Bank, 145 Ga. App. 190, 243 S.E.2d 266 (1978); Shaver v. Aetna Fin. Co., 148 Ga. App. 740, 252 S.E.2d 684 (1979); Sapp v. ABC Credit & Inv. Co., 243 Ga. 151, 253 S.E.2d 82 (1979); Wessinger v. Kennesaw Fin. Co., 151 Ga. App. 660, 261 S.E.2d 649 (1979); Layton v. Liberty Loans, 152 Ga. App. 504, 263 S.E.2d 167 (1979); Commercial Credit Plan, Inc. v. Parker, 152 Ga. App. 409, 263 S.E.2d 220 (1979); Plant v. Blazer Fin. Servs., Inc., 598 F.2d 1357 (5th Cir. 1979); Gainesville Fin. Servs., Inc. v. McDougal, 154 Ga. App. 820, 270 S.E.2d 40 (1980); Southern Dist. Co. v. Ector, 155 Ga. App. 521, 271 S.E.2d 661 (1980); Sanders v. Liberty Loan Corp., 156 Ga. App. 628, 276 S.E.2d 49 (1980); Whitfield v. Termplan, Inc., 651 F.2d 383 (5th Cir. 1981); Aetna Fin. Co. v. Brown, 172 Ga. App. 537, 323 S.E.2d 720 (1984); Harlow v. Walton Loan Corp., 174 Ga. App. 311, 329 S.E.2d 616 (1985); Ford Motor Credit Co. v. London, 175 Ga. App. 33, 332 S.E.2d 345 (1985).

**Acceleration of Interest**

**Acceleration clauses are not per se invalid.** Bragg v. HFC, 140 Ga. App. 75, 230 S.E.2d 55 (1976).

**Collection of unearned interest is not per se improper** under Georgia law. Barrett v. Vernie Jones Ford, Inc., 395 F. Supp. 904 (N.D. Ga. 1975), rev'd on other grounds sub nom. McDaniel v. Fulton Nat'l Bank, 543

F.2d 568 (5th Cir. 1976), aff'd, 578 F.2d 1185 (5th Cir. 1978).

**Acceleration clause enforceable unless rendering note usurious.** — Acceleration clause not providing for rebate of unearned interest is enforceable absent finding that clause, as applied, renders note violative of state usury laws. Once such finding has been made, however, the note becomes void. Barrett v. Vernie Jones Ford, Inc., 395 F. Supp. 904 (N.D. Ga. 1975), rev'd on other grounds sub nom. McDaniel v. Fulton Nat'l Bank, 543 F.2d 568 (5th Cir. 1976), aff'd, 578 F.2d 1185 (5th Cir. 1978) (decided prior to 1980 amendment of this section).

**Acceleration clause which includes unearned interest voids the contract.** — Acceleration clause in Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., contract which upon default permits the collection of entire balance due on contract without excluding unearned interest is violative of the Act and voids contract. Diggs v. Swift Loan & Fin. Co., 154 Ga. App. 389, 268 S.E.2d 433 (1980) (decided prior to 1980 amendment of this section).

Where acceleration of a debt, combined with a claim of unearned interest, renders obligation usurious, it becomes void under provisions of Industrial Loan Act, O.C.G.A. § 7-3-1 et seq. Barrett v. Vernie Jones Ford, Inc., 395 F. Supp. 904 (N.D. Ga. 1975), rev'd on other grounds sub nom. McDaniel v. Fulton Nat'l Bank, 543 F.2d 568 (5th Cir. 1976), aff'd, 578 F.2d 1185 (5th Cir. 1978) (decided prior to 1980 amendment of this section).

Provision for acceleration of unearned interest is a contract authorizing collection of more than is provided or approved by the Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., and thus authorizes a result contrary to its terms, and is in violation of the Act; the loan is void. Frazier v. Courtesy Fin. Co., 132 Ga. App. 365, 208 S.E.2d 175 (1974) (decided prior to 1980 amendment of this section).

**Where acceleration clause renders note usurious, note is unenforceable.** — If effect of an acceleration clause is to render note as a whole usurious, the note is unenforceable in Georgia courts. Barrett v. Vernie Jones Ford, Inc., 395 F. Supp. 904 (N.D. Ga. 1975), rev'd on other grounds sub nom. McDaniel v. Fulton Nat'l Bank, 543 F.2d 568 (5th Cir. 1976), aff'd, 578 F.2d 1185 (5th Cir. 1978)

(decided prior to 1980 amendment of this section).

**Invalid acceleration clause in security agreement portion of contract voids obligation.** — Provision found in security agreement portion of loan contract providing for acceleration of unaccrued interest voids contract notwithstanding presence of valid acceleration provision in note portion of contract. *General Fin. Corp. v. Sprouse*, 577 F.2d 989 (5th Cir. 1978).

**Provision authorizing usurious collection voids obligation even though not enforced.** — Provision in note authorizing usurious collection alone is sufficient to void obligation

even where creditor does not attempt enforcement. *Barrett v. Vernie Jones Ford, Inc.*, 395 F. Supp. 904 (N.D. Ga. 1975), rev'd on other grounds sub nom. *McDaniel v. Fulton Nat'l Bank*, 543 F.2d 568 (5th Cir. 1976), aff'd, 578 F.2d 1185 (5th Cir. 1978) (decided prior to 1980 amendment of this section).

**Accelerated unearned interest usurious.** — When plaintiff accelerated and claimed unearned interest on unmatured installments, this amount was usurious. *Liberty Loan Corp. v. Childs*, 140 Ga. App. 473, 231 S.E.2d 352 (1976), cert. dismissed, 239 Ga. 220, 236 S.E.2d 373 (1977).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 54 Am. Jur. 2d, Moneylenders and Pawnbrokers, § 19.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, §§ 313-316.

**ALR.** — Constitutionality of statutes regulating the business of making small loans, 69 ALR 581, 125 ALR 743, 149 ALR 1424.

Doctrine of in pari delicto as applied to borrower seeking affirmative relief from loan contract made in violation of small loan act, 142 ALR 644.

Usury as affected by acceleration clause, 66 ALR3d 650.

What constitutes Truth in Lending Act violation which "was not intentional and resulted from bona fide error notwithstanding maintenance of procedures reasonably adapted to avoid any such error" within meaning of § 130(c) of Act (15 USCA § 1640(c)), 153 ALR Fed. 193.

## CHAPTER 4

## INTEREST AND USURY

Article 1		Sec.	
In General			
Sec.			collection from insolvent to prejudice of others.
7-4-1.	"Usury" defined.	7-4-12.	Interest on judgments.
7-4-2.	Legal rate of interest; maximum rate of interest generally.	7-4-12.1.	Interest on arrearage on child support.
7-4-3.	Finance charge on retail installment contracts for manufactured homes and motor vehicles subject to federal law; stating of federal provisions in contract.	7-4-13.	Law of place of contract governs interest unless otherwise provided.
7-4-3.1.	Maximum interest rate on loans by insured financial institutions [Repealed].	7-4-14.	Interest runs from default unless otherwise agreed; when demand necessary.
7-4-4.	Advertisement of rates of interest or finance charge.	7-4-15.	When interest runs on liquidated demands; promissory notes payable on demand.
7-4-5.	Failure to include federal loan act provisions in retail installment loan; violating advertising restrictions.	7-4-16.	When interest runs on commercial accounts; maximum interest rate on commercial accounts.
7-4-6.	No limit on interest rate payable by profit corporations or persons on nonconsumer loans in excess of \$3,000.00 [Repealed].	7-4-17.	Payment applied first to interest; no interest on unpaid interest; exceptions.
7-4-7.	No limit on interest rate on loans of \$100,000.00 or more [Repealed].	7-4-17.1.	Refunds from loans on which interest is calculated under the add-on interest method and which are paid off prior to maturity [Repealed].
7-4-8.	Commission to third person does not make lawful interest usurious.	7-4-18.	Criminal penalty for excessive interest.
7-4-9.	Back interest may be stipulated in contract and recovered.	7-4-19.	Civil action to enforce chapter.
7-4-10.	Usury forfeits entire interest; right of setoff; how forfeiture discharged; when time bars action or defense.	7-4-20.	Election to forgo application of federal usury laws.
7-4-11.	Usury is personal defense; no	7-4-21.	Class action barred on claims for violation of interest laws on loans secured by real estate.

## Article 2

## Residential Second Mortgages

7-4-30 through 7-4-36. [Repealed].

**Cross references.** — Duty of Department of Banking and Finance to receive and investigate complaints and allegations regarding violations of interest and usury laws, § 7-1-99. Illegal payday loans, § 16-17-1 et seq.

**Law reviews.** — For article discussing developments in Georgia usury law in 1976 to 1977, see 29 Mercer L. Rev. 41 (1977). For

annual survey of commercial law, see 35 Mercer L. Rev. 53 (1983). For annual survey on commercial law, see 36 Mercer L. Rev. 115 (1984). For survey article on commercial law, see 44 Mercer L. Rev. 99 (1992).

For note discussing the law of usury in Georgia, see 12 Ga. L. Rev. 814 (1972). For note discussing transfer fees in home loan assumptions in reference to the Georgia



usury laws, see 9 Ga. L. Rev. 454 (1975). For note, "State-Imposed Interest Rate Ceilings

and Home Equity Loan Scandal in Georgia," see 11 Ga. St. U.L. Rev. 591 (1995).

### JUDICIAL DECISIONS

**O.C.G.A. Ch. 4, T. 7 represents clarification of public policy of state** that usury is not to be tolerated, and courts should therefore be chary in permitting this policy to be thwarted. *Eiberger v. West*, 247 Ga. 767, 281 S.E.2d 148 (1981).

**Effect of usury statute's repeal.** — A usury statute in effect at the time a loan is secured is no defense to an action by the creditor to

secure repayment of the debt where the usury statute is repealed before the defense of usury is raised. *Fountain v. Dixie Fin. Corp.*, 252 Ga. 543, 314 S.E.2d 906 (1984).

**Cited** in *Robinson v. Colonial Dist. Co.*, 106 Ga. App. 274, 126 S.E.2d 824 (1962); *Meadows v. Charlie Wood, Inc.*, 448 F. Supp. 717 (M.D. Ga. 1978).

### RESEARCH REFERENCES

**ALR.** — Affirmative liability for usurious penalty or excess interest paid under usurious contract in event of assignment or transfer, 78 ALR 408.

Usury: liability for the statutory penalty of persons other than the offending lender in a usurious loan transaction, 4 ALR3d 650.

Provision for interest after maturity at a rate in excess of legal rate as usurious or otherwise illegal, 28 ALR3d 449.

Usury in connection with loan calling for variable interest rate, 18 ALR4th 1068.

## ARTICLE 1

### IN GENERAL

**Law reviews.** — For article, "Small Loans Under Georgia Laws," see 3 Mercer L. Rev. 227 (1952).

For note, "Price-Fixing in Georgia," see 3 Mercer L. Rev. 314 (1952).

For comment discussing the acceleration

of a loan repayment to collect unearned interest as violative of the Georgia Industrial Loan Act (Ch. 3, T. 7), in light of *Lewis v. Termplan, Inc.*, 124 Ga. App. 507, 184 S.E.2d 473 (1971), see 9 Ga. St. B.J. 380 (1973).

### JUDICIAL DECISIONS

**Doctrine of estoppel** applies where usurious note was prepared by borrower and presented to unwary lender. *Eiberger v. West*, 247 Ga. 767, 281 S.E.2d 148 (1981).

**Cited** in *Spartan Grain & Mill Co. v. Ayers*, 517 F.2d 214 (5th Cir. 1975); *Scheil v. Georgia Fed. Sav. & Loan Ass'n*, 154 Ga. App. 714, 269 S.E.2d 881 (1980).

### RESEARCH REFERENCES

**ALR.** — Effect on indebtedness originally valid of usurious forbearance, renewal, or extension, 3 ALR 877.

Annual rests on book accounts, 5 ALR 551.

Negotiable instruments law as affecting defense of usury, 5 ALR 1447; 95 ALR 735.

Waiver of usury by renewal or other executory agreement, 13 ALR 1213; 74 ALR 1184.

Payment of or offer to pay principal and legal interest as condition of relief in equity against usurious contract, 17 ALR 123; 70 ALR 693; 135 ALR 808; 166 ALR 458.

Right to interest for period before advances under a loan to be advanced to the borrower in installments, 40 ALR 825.

Rate of interest chargeable against guardians, executors or administrators, and trustees, 55 ALR 950; 112 ALR 833; 156 ALR 936.

Usury: expenses or charges (including taxes) incident to loan of money, 63 ALR 823; 105 ALR 795; 52 ALR2d 703.

Right of holder of preferred claim to interest after appointment of receiver or declared bankruptcy or insolvency, where assets are insufficient to pay principal of all claims, 69 ALR 1210.

Usurious loan agreement as affecting collateral transaction or instrument not otherwise usurious, 75 ALR 1344.

Statutes in relation to interest as obnoxious to constitutional provision against impairing obligation of contracts, 87 ALR 462.

Obligations covering deferred payments of purchase money, or extension thereof, as loan or forbearance within usury laws, 91 ALR 1105.

Judgment as *res judicata* of usury notwithstanding question as to usury was not raised, 98 ALR 1027.

Validity, construction, and effect of express agreement releasing cause of action or defense based on exaction of usury, 99 ALR 600.

What amounts to sale of credit as distinguished from a loan as regards usury law, 104 ALR 245.

Parol evidence rule as affecting extrinsic evidence to show or to negative usury, 104 ALR 1261.

Validity and effect of provision in contract disclaiming usurious intention, or otherwise attempting in anticipation to have the contract interpreted or modified so as to avoid imputation of usury, 109 ALR 1471.

Right to equitable relief from usury as affected by laches, 111 ALR 126.

Usury as affected by provision for sinking fund, 119 ALR 1490.

Right of junior mortgagee to attack senior mortgage for usury, 121 ALR 879.

Usury as affected by repayment, or borrower's option to repay, loan before maturity, 130 ALR 73; 75 ALR2d 1265.

Campaign or concerted action in interest of public by bar association or other group against usurious or illegal practices, or for the investigation of business or other activi-

ties with which such practices may be associated, 132 ALR 1177.

Who other than borrower may avail himself of latter's right to recover back usurious payments or penalties therefor, 134 ALR 1335.

Payment of or offer to pay principal and legal interest as condition of relief in equity against usurious contract, 135 ALR 808; 166 ALR 458.

Constitutionality, construction, and application of statutes regarding rate of interest during "emergency", 147 ALR 1023.

Usury as predicable upon transaction in form a sale or exchange of commercial paper or other choses in action, 165 ALR 626.

Construction and application of provision of "small loan" statute against payment of interest in advance, 166 ALR 433.

Rate of interest after maturity on obligation which fixes rate of interest expressly until maturity, 16 ALR2d 902.

What statute of limitations governs action or claim for affirmative relief against usurious obligation or to recover usurious payment, 48 ALR2d 401.

Quantum, degree, or weight of evidence to sustain usury charge, 51 ALR2d 1087.

Usury: expenses or charges (including taxes) incident to loan of money, 52 ALR2d 703.

Usury as affected by repayment of, or borrower's option to repay, loan before maturity, 75 ALR2d 1265.

Usury: requiring borrower to pay for insurance as condition of loan, 91 ALR2d 1344.

Usury: charging borrower for or with expense or trouble of procuring money loaned, 91 ALR2d 1389.

Advance in price for credit sale as compared with cash sale as usury, 14 ALR3d 1065.

Agreement for share in earnings of or income from property in lieu of, or in addition to, interest as usurious, 16 ALR3d 475.

Borrower's initiation of, or fraud contributing to, usurious transaction as affecting rights or remedies of the parties, 16 ALR3d 510.

Usury as affected by acceleration clause, 66 ALR3d 650.

Contingency as to borrower's receipt of money or other property from which loan is to be repaid as rendering loan usurious, 92 ALR3d 623.

Leaving part of loan on deposit with lender as usury, 92 ALR3d 769.

Prejudgment interest awards in divorce cases, 62 ALR4th 156.

### 7-4-1. "Usury" defined.

The term "usury" means reserving and taking or contracting to reserve and take, either directly or indirectly, a greater sum for the use of money than the lawful interest. (Orig. Code 1863, § 2023; Code 1868, § 2024; Code 1882, § 2051; Civil Code 1895, § 2877; Civil Code 1910, § 3427; Code 1933, § 57-102.)

**Law reviews.** — For note discussing the reservation of interest at highest lawful rate as constituting usury, see 1 Ga. L. Rev. No. 2 p. 38 (1927). For note discussing whether a

holder in due course takes free of claims of violations of the usury laws, see 12 Ga. L. Rev. 814 (1978).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

#### INTENT

#### APPLICATION

#### PAROL EVIDENCE

### General Consideration

**Policy of state.** — It is the policy of laws of this state to inhibit taking of usury under every and any pretense or contrivance whatsoever. *McGehee v. Petree*, 165 Ga. 492, 141 S.E. 206 (1928); *Public Fin. Corp. v. State*, 67 Ga. App. 635, 21 S.E.2d 476 (1942).

**Construction and application of section with § 7-4-18.** — Former Code 1933, §§ 57-102, 57-117 and 57-9901 (see O.C.G.A. §§ 7-4-1 and 7-4-18) are to be construed and applied as one law. *Wall v. Lewis*, 192 Ga. 652, 16 S.E.2d 430 (1941).

**"Usury."** — Usury is excess over legal interest charged by lender to borrower for use of lender's money. *Sledd v. Pilot Life Ins. Co.*, 52 Ga. App. 326, 183 S.E. 199 (1935).

**Four requisites of usurious transactions.** — There are four requisites of every usurious transaction: (1) a loan or forbearance of money, either express or implied; (2) upon understanding that principal shall or may be returned; (3) that for such loan or forbearance a greater profit than is authorized by law shall be paid or is agreed to be paid; and (4) that the contract was made with intent to violate the law. *Bailey v.*

*Newberry*, 52 Ga. App. 693, 184 S.E. 357 (1935).

**Substance of transaction is focus in determining whether it is usurious.** — It is duty of court to look, not at form and words, but at substance of transaction. *Rushing v. Worsham & Co.*, 102 Ga. 825, 30 S.E. 541 (1898); *Young v. First Nat'l Bank*, 22 Ga. App. 58, 95 S.E. 381 (1918).

**Usurious original transaction infects renewal.** — Contract for usurious loan not purged of usury by renewal note, where original contract continues. *Hammond v. Buys*, 1 Ga. 416 (1846).

If there was usury in the original loan which was not purged out when renewal was given, they are contaminated just as original contract was, and all payments made in interval are to be treated not as payments of usury, but payments made on original debt. *Archer v. McCray*, 59 Ga. 546 (1877); *McGee v. Long*, 83 Ga. 156, 9 S.E. 1107 (1889); *Lockwood v. Muhlberg*, 124 Ga. 660, 53 S.E. 92 (1906).

Where original transaction was usurious, the usury infects any renewal note for the same debt or any part thereof, if the usury



**General Consideration (Cont'd)**

was never purged. *Hartsfield Co. v. Watkins*, 67 Ga. App. 411, 20 S.E.2d 440 (1942).

**Usurious contract not cured by compromise and settlement for less.** — Since usury consists not only in reserving and taking but in contracting to reserve and take more than legal rate, fact that agreed excess was compromised and settled for a less amount would not free a transaction from usury. *Lankford v. Holton*, 187 Ga. 94, 200 S.E. 243 (1938), later appeal, 195 Ga. 317, 24 S.E.2d 292 (1943).

**Where undisputed pleadings show usurious scheme, judgment on pleadings appropriate.** — Where facts show without dispute a device to extract more than legal rate of interest for use of money, such question need not be submitted to jury. Accordingly, where undisputed pleadings show such a scheme, it is not error for trial court to grant plaintiff's motion for judgment on pleadings under provisions of § 12(c) of the Civil Practice Act (see O.C.G.A. § 9-11-12(c)). *Cook v. Young*, 225 Ga. 26, 165 S.E.2d 727 (1969).

**If usury is found, all usurious interest is void.** *Gilbert v. Cherry*, 136 Ga. App. 417, 221 S.E.2d 472 (1975).

**Cited in** *Scott v. Saffold*, 37 Ga. 384 (1867); *Shealy v. Toole*, 56 Ga. 210 (1876); *Easterlin v. Rylander*, 59 Ga. 292 (1877); *Wofford v. Wyly*, 72 Ga. 863 (1884); *Neel v. Young*, 78 Ga. 342 (1886); *Reynolds v. Neal*, 91 Ga. 609, 18 S.E. 530 (1893); *Cook v. Equitable Bldg. & Loan Ass'n*, 104 Ga. 814, 30 S.E. 911 (1898); *Green v. Equitable Mtg. Co.*, 107 Ga. 536, 33 S.E. 869 (1899); *Stewart v. Slocumb*, 120 Ga. 762, 48 S.E. 311 (1904); *McGehee v. Petree*, 165 Ga. 492, 141 S.E. 206 (1928); *Graham v. Lynch*, 206 Ga. 301, 57 S.E.2d 86 (1950); *McConnell v. Shropshire*, 80 Ga. App. 677, 57 S.E.2d 293 (1950); *Pickens Inv. Co. v. Jones*, 82 Ga. App. 850, 62 S.E.2d 753 (1950); *M.B. Dale, Inc. v. Dawson County Bank*, 112 Ga. App. 560, 145 S.E.2d 619 (1965); *Vezzani v. Tallant*, 121 Ga. App. 67, 172 S.E.2d 858 (1970); *Roberts v. Cameron-Brown Co.*, 556 F.2d 356 (5th Cir. 1977); *Murdock Acceptance Corp. v. Wagnon*, 587 F.2d 764 (5th Cir. 1979); *Laminoirs-Trefileries-Cableries De Lens, S.A. v. Southwire Co.*, 484 F. Supp. 1063 (N.D. Ga. 1980); *Southern Fed. Sav. & Loan Ass'n v.*

*Lyle*, 249 Ga. 284, 290 S.E.2d 455 (1982).

**Intent**

**Essential element is intent, at time contract is executed, to take unlawful interest.**

— To constitute usury, it is essential that there be, at time contract is executed, an intent on part of lender to take or charge, for use of money, a higher rate of interest than that allowed by law. *Bellerby v. Goodwyn*, 112 Ga. 306, 37 S.E. 376 (1900); *Loganville Banking Co. v. Forrester*, 143 Ga. 302, 84 S.E. 961, 1915D L.R.A. 1195 (1915); *Harrison v. Arrendale*, 113 Ga. App. 118, 147 S.E.2d 356 (1966), later appeal, 117 Ga. App. 463, 160 S.E.2d 653 (1968); *Williams v. First Bank & Trust Co.*, 154 Ga. App. 879, 269 S.E.2d 923 (1980); *McCrory v. Young*, 158 Ga. App. 678, 282 S.E.2d 163 (1981).

**Mistake or inadvertence does not make a loan usurious.** — Mistake in calculation or by inadvertence, not shown to be part of a usurious design or otherwise intentional, does not make a loan usurious. *Sumner v. Adel Banking Co.*, 244 Ga. 73, 259 S.E.2d 32 (1979).

To constitute usury it is essential that there be, at the time contract is executed, an intent on part of lender to take or charge for use of money a higher rate of interest than that allowed by law. If intent be to take only legal interest, a slight and trifling excess, due to mistake or inadvertence, will not taint transaction with usury. *Cook v. Young*, 225 Ga. 26, 165 S.E.2d 727 (1969).

If the intent be to take only legal interest, a slight and trifling excess, due to mistake or inadvertence, will not taint transaction with usury. *Williams v. First Bank & Trust Co.*, 154 Ga. App. 879, 269 S.E.2d 923 (1980).

**Intent that excess interest be paid.** — Transaction is usurious where lender and borrower mutually intend that excess interest be paid. *Union Sav. Bank & Trust Co. v. Dottenheim*, 107 Ga. 606, 34 S.E. 217 (1899).

**Intent implied where note usurious on its face.** — Intent to charge usurious rates may be implied if all other essential elements are expressed upon face of contract. *Harrison v. Arrendale*, 113 Ga. App. 118, 147 S.E.2d 356 (1966).

Where note calls for usurious interest on its face, usurious intent will be implied, although lender may negate it. *Williams v.*

First Bank & Trust Co., 154 Ga. App. 879, 269 S.E.2d 923 (1980).

**Intent to take unlawful interest demands verdict of usury.** — If it appears that the lender intended to take for use of money more than the lawful rate of interest, a verdict of usury is demanded. *Simpson v. Charters*, 188 Ga. 842, 5 S.E.2d 27 (1939).

**Jury question.** — Question of usurious intent and truth of transaction is generally for jury determination, but where contract is usurious on its face, intent to violate usury law may be implied. *McCrory v. Young*, 158 Ga. App. 678, 282 S.E.2d 163 (1981).

**Rebuttal of intent by evidence of honest mistake.** — Implication of usurious intent arising from taking or reserving of interest greater than legal rate may be rebutted by evidence that excess was result of honest mistake and that usury was not intended. But where evidence is clear, this question can be decided as a matter of law. *McCrory v. Young*, 158 Ga. App. 678, 282 S.E.2d 163 (1981).

### Application

**Price never considered usury.** — One may sell one's credit, one's responsibility, one's goods or one's lands; and if the person deals fairly, the person may take as large a price for either as the person can get, and there can be no usury in the case. *Rushing v. Worsham & Co.*, 102 Ga. 825, 30 S.E. 541 (1898).

**Cash price and time price.** — Seller may make a difference in the seller's cash price and the seller's time price for property. *Bowen v. Consolidated Mtg. & Inv. Corp.*, 115 Ga. App. 874, 156 S.E.2d 168 (1967).

Higher time price than cash price for property is not a loan; thus, usury laws are inapplicable. *Bowen v. Consolidated Mtg. & Inv. Corp.*, 115 Ga. App. 874, 156 S.E.2d 168 (1967).

Conditional-sale contract for amount termed time-price is not usurious, even though in a given instance the difference in cash price and term price may exceed eight percent interest. *Newkirk v. Universal C.I.T. Credit Corp.*, 93 Ga. App. 1, 90 S.E.2d 618 (1955).

**Property received as interest permissible unless value exceeds lawful rate.** — Creditor has right to demand payment of the creditor's debt with legal interest; and if the

creditor receives property, the value of which does not exceed the creditor's lawful demand, the creditor has not received any usury, although the creditor may have agreed with debtor that the property was of greater value than the sum the creditor was lawfully entitled to exact. *First Nat'l Bank v. Davis*, 135 Ga. 687, 70 S.E. 246, 36 L.R.A. (n.s.) 134 (1911).

**Note permitting acceleration of all liabilities not usurious on its face.** — Clause in secondary security deed on realty permitting acceleration of all liabilities does not render note usurious on its face. *Goodwin v. Trust Co.*, 144 Ga. App. 787, 242 S.E.2d 302 (1978).

**Note usurious where acceleration clause allows more than lawful interest.** — Promissory note containing acceleration clause permitting collection of more than allowable interest constitutes usurious contract to reserve and take more than lawful interest. *Goodwin v. Trust Co.*, 144 Ga. App. 787, 242 S.E.2d 302 (1978).

**Payment of sum exceeding lawful rate under guise of rent usurious.** — Where vendee of property is to pay a vendor 10 percent on purchase money until it is settled in full, under name of rent, such contract is usurious on its face. *Scofield v. McNaught*, 52 Ga. 69 (1874).

**Payment of rents from property exceeding lawful rate, as consideration for loan, constitutes usury.** — If money is loaned for purpose of enabling borrower to buy certain shop, upon agreement that for use of money lender shall receive from borrower one half of specified rents from property, which amounts to more than highest legal rate of interest per annum, the transaction will be usurious. *Reese v. Bloodsworth*, 146 Ga. 355, 91 S.E. 120 (1917).

**Paying taxes on bonds, in addition to lawful interest, is usurious.** — Stipulation in bonds to pay, in addition to lawful interest, a percentage of federal income taxes that might be imposed upon the bonds is usurious. *Newcomb v. Niskey's Lake, Inc.*, 190 Ga. 565, 10 S.E.2d 51, answer conformed to, 63 Ga. App. 811, 12 S.E.2d 160 (1940).

**Commission, in addition to full rate of lawful interest, usurious.** — Under former Code 1933, § 57-102 (see O.C.G.A. § 7-4-1), charge by lender as a commission of \$8,000.00, deducted from a loan of \$80,000.00 evidenced by bonds of borrower, which carrying full rate of lawful interest

**Application (Cont'd)**

(eight percent per annum) is usury. *Newcomb v. Niskey's Lake, Inc.*, 190 Ga. 565, 10 S.E.2d 51, answer conformed to, 63 Ga. App. 811, 12 S.E.2d 160 (1940).

**Agreement to forbear collection of judgment in consideration of usurious interest unlawful.** — If a judgment not tainted with usury is transferred, and the transferee agrees with the defendants to forbear its collection for a term of time, in consideration of usurious interest paid the defendants, such subsequent agreement is usurious. *Troutman v. Barnett*, 9 Ga. 30 (1850).

**Requirement that borrower keep certain sum on deposit makes loan usurious.** — Requirement that borrower shall keep on deposit a certain sum, if made a condition precedent to loan of money, infects loan with usury; for reason that borrower thus pays interest on money which borrower does not receive or have use of. *Reid v. National Bank*, 149 Ga. App. 834, 256 S.E.2d 82 (1979); *Bank of Lumpkin v. Farmers State Bank*, 161 Ga. 801, 132 S.E. 221 (1963).

**Excess interest may be paid for considerations beyond use of money.** — Where excess over legal interest is paid for other good and valuable considerations beyond mere use of money, it is not usury. *Atlanta Mining & Rolling Mill Co. v. Gwyer*, 48 Ga. 9 (1873); *Sledd v. Pilot Life Ins. Co.*, 52 Ga. App. 326, 183 S.E. 199 (1935); *Simpson v. Charters*, 188 Ga. 842, 5 S.E.2d 27 (1939).

**Premium for insurance required as collateral security for loan not charge for use of money.** *Sledd v. Pilot Life Ins. Co.*, 52 Ga. App. 326, 183 S.E. 199 (1935).

**Interest on overdue interest and attorneys' fees lawful.** — It is lawful to contract for interest on interest overdue, and for payment by debtor of reasonable attorneys' fees on sums, both principal and interest, which have to be collected by suit. *Merck v. American Freehold Land Mtg. Co.*, 79 Ga. 213, 7 S.E. 265 (1887); *Young v. First Nat'l Bank*, 22 Ga. App. 58, 95 S.E. 381 (1918).

**Inclusion of past due interest in note not usurious.** — Contention that, because a sum of past due interest was included in note, the transaction was thereby tainted with usury, on theory that interest cannot be collected on interest, was without merit. *Walton v. Johnson*, 213 Ga. 108, 97 S.E.2d 310 (1957).

**Interest recoverable on annual interest installments from time they become due.** — Upon contract to pay interest annually interest may be recovered on annual installments of interest from time they became due. *Calhoun v. Marshall*, 61 Ga. 275, 34 Am. R. 99 (1878); *Ray v. Pease*, 97 Ga. 618, 25 S.E. 360 (1895); *Haley v. Covington*, 19 Ga. App. 782, 92 S.E. 297 (1917).

**Loan not usurious if used to pay usurious loan.** — Paying old usurious loan with new, nonusurious loan does not necessarily render new loan usurious. *Lott v. Peterson*, 23 Ga. App. 458, 98 S.E. 361 (1919).

Where lender of money neither charges nor receives more than legal rate of interest, fact that money was, with the lender's knowledge, borrowed for purpose of paying debt infected with usury due by borrower to third person does not make loan usurious. *Thompson v. First State Bank*, 99 Ga. 651, 26 S.E. 79 (1896); *Carter v. Brooks*, 144 Ga. 852, 88 S.E. 209 (1916).

**Facts warranting finding that transaction is merely device to cover agreement to pay usurious interest.** — See *Kennedy v. Baggarley*, 15 Ga. App. 811, 84 S.E. 211 (1915).

**Parol Evidence**

**Introduction to show contract was cover for usury.** — Parol evidence may be introduced to show written contract was a cover for usury. *McDaniel v. Bank of Bethlehem*, 22 Ga. App. 223, 95 S.E. 724 (1918).

**Admissible for testing validity of a transaction.** — The law abhors usury, and will search every fact and circumstance and allow introduction of parol evidence to test validity of the real transaction of parties. *Bailey v. Newberry*, 52 Ga. App. 693, 184 S.E. 357 (1935).

**OPINIONS OF THE ATTORNEY GENERAL**

**"Usury."** — Usury is not the taking of interest from borrower at an unlawful rate, but rather it is receiving from any source a greater sum for use of money than the lawful

interest. 1969 Op. Att'y Gen. No. 69-53.

**Where interest plus points or loan discount exceed legal limit, loan usurious.** — If interest rate charged borrower coupled with



points or loan discount collected from seller exceed legal limit, such loan is usurious; the standard charges in a loan transaction are not included in this computation if they are expended in a bona fide manner. 1969 Op. Att'y Gen. No. 69-53.

**Carrying charges limited to legal rate plus actual expenses.** — Where no distinction is

made between cash price and time price of an article, carrying charges are limited to legal rate of interest, plus any actual expense incurred by vendor incident to sale, such as fee for recording security instrument and reasonable protective insurance. 1954-56 Op. Att'y Gen. p. 448.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 45 Am. Jur. 2d, Interest and Usury, §§ 2, 84 et seq.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, §§ 3-5, 119.

**ALR.** — Effect on indebtedness originally valid of usurious forbearance, renewal, or extension, 3 ALR 877.

Waiver of usury by renewal or other executory agreement, 13 ALR 1213; 74 ALR 1184.

Provision in statute or ordinance limiting rate of interest per annum as precluding requirement of payment at maximum rate at intervals of less than a year, 29 ALR 1109.

Validity of agreement to pay interest on interest, 37 ALR 325; 76 ALR 1484.

Usury: expenses or charges (including taxes) incident to loan of money, 53 ALR 743; 63 ALR 823; 105 ALR 795; 52 ALR2d 703.

Noncompliance with conditions prescribed by statute as affecting validity of contract, under usury laws, for payment of premium on loan of building and loan association, 74 ALR 973.

Waiver of usury by renewal or other executory agreements, 74 ALR 1184.

Delay in paying over proceeds of loan to borrower as affecting question of usury, 76 ALR 1467.

Right of a purchaser assuming a mortgage debt, with the authorization of the mortgagor, to set up usury in mortgage as a defense or rely upon it as a ground of relief in equity, 82 ALR 1153.

Parol-evidence rule as affecting extrinsic evidence to show or to negative usury, 82 ALR 1199; 104 ALR 1261.

Taking of usury or excessive interest as subject of criminal conspiracy, 89 ALR 830.

Obligations covering deferred payments of purchase money, or extension thereof, as loan or forbearance within usury laws, 91 ALR 1105.

Usury as predicable on agreement by which lender is to receive something other than money for his loan, 95 ALR 1231.

Validity, construction, and effect of express agreement releasing cause of action or defense based on exaction of usury, 99 ALR 600.

Conflict of laws as to usury, 125 ALR 482.

Note or other obligation payable on demand for an amount in excess of amount actually loaned as usurious, 127 ALR 460.

Finance charge in connection with conditional sale contract as usury, 143 ALR 238.

Transaction in form a sale, but accompanied by an agreement or option for repurchase by the vendor or a third person previously interested, as a loan, as regards usury law, 154 ALR 1063.

Computing interest on basis of 360 days in year, 30 days in month, or the like, as usury, 35 ALR2d 842.

Usury: expenses or charges (including taxes) incident to loan of money, 52 ALR2d 703.

Taking or charging interest in advance as usury, 57 ALR2d 630.

Statute denying defense of usury to corporation, 63 ALR2d 924.

Admissibility, in civil case involving usury issue, of evidence of other assertedly usurious transactions, 67 ALR2d 232.

Usury as affected by repayment of, or borrower's option to repay, loan before maturity, 75 ALR2d 1265.

Payments under (ostensibly) independent contract as usury, 81 ALR2d 1280.

Practice of exacting usury as a nuisance or ground for injunction, 83 ALR2d 848.

Usury: liability for the statutory penalty of persons other than the offending lender in a usurious loan transaction, 4 ALR3d 650.

Usury as affected by mistake in amount or calculation of interest or service charges for loan, 11 ALR3d 1498.

Advance in price for credit sale as compared with cash sale as usury, 14 ALR3d 1065.

Provision for interest after maturity at a rate in excess of legal rate as usurious or otherwise illegal, 28 ALR3d 449.

Reformation of usurious contract, 74 ALR3d 1239.

Contingency as to borrower's receipt of money or other property from which loan is to be repaid as rendering loan usurious, 92 ALR3d 623.

Leaving part of loan on deposit with lender as usury, 92 ALR3d 769.

Application of usury laws to transactions characterized as "leases," 94 ALR3d 640.

## 7-4-2. Legal rate of interest; maximum rate of interest generally.

(a)(1)(A) The legal rate of interest shall be 7 percent per annum simple interest where the rate percent is not established by written contract. Notwithstanding the provisions of other laws to the contrary, except Code Section 7-4-18, the parties may establish by written contract any rate of interest, expressed in simple interest terms as of the date of the evidence of the indebtedness, and charges and any manner of repayment, prepayment, or, subject to the provisions of paragraph (1) of subsection (b) of this Code section, acceleration, where the principal amount involved is more than \$3,000.00 but less than \$250,000.00 or where the lender or creditor has committed to lend, advance, or forbear with respect to any loan, advance, or forbearance to enforce the collection of more than \$3,000.00 but less than \$250,000.00.

(B) Where the principal amount is \$250,000.00 or more, or the lender or creditor has committed to lend, advance, or forbear with respect to any loan, advance, or forbearance to enforce the collection of \$250,000.00 or more, the parties may establish by written contract any rate of interest, expressed in simple interest terms or otherwise, and charges to be paid by the borrower or debtor.

(C) Nothing contained in this subsection shall be construed to prohibit the computation and collection of interest at a variable rate or on a negative amortization basis or on an equity participation basis or on an appreciation basis.

(2) Where the principal amount involved is \$3,000.00 or less, such rate shall not exceed 16 percent per annum simple interest on any loan, advance, or forbearance to enforce the collection of any sum of money unless the loan, advance, or forbearance to enforce the collection of any sum of money is made pursuant to another law.

(3) As used in this Code section, the term "interest" means a charge for the use of money computed over the term of the contract at the rate stated in the contract or precomputed at a stated rate on the scheduled principal balance or computed in any other way or any other form. Principal includes such charges to which the parties may agree under paragraph (1) of this subsection. Amounts paid or contracted to be paid as either an origination fee or discount points, or both, on any loan

secured by an interest in real estate shall not be considered interest and shall not be taken into consideration in the calculation of interest and shall not be subject to rebate as provided in paragraph (1) of subsection (b) of this Code section.

(b)(1) Upon acceleration of the maturity of any loan, advance of money, or forbearance to enforce the collection of any sum of money upon which interest has been precomputed, unearned interest shall be rebated to the debtor in such amount as would result in the rate of interest earned being no greater than the rate of interest established by the original contract. In the case of a loan in which the principal and the interest for the entire term of the loan are included in the face amount of the loan and the loan is to be paid back in weekly, monthly, quarterly, semiannual, or yearly installments, with the interest and principal portions of each installment determined under the pro rata method, any such rebate shall be determined on the pro rata method.

(2) Unless stipulated in the contract, there shall be no prepayment penalty.

(c) Nothing contained in this Code section shall be construed to amend or modify the provisions of Chapter 3 of this title, the "Georgia Industrial Loan Act," Article 1 of Chapter 1 of Title 10, the "Retail Installment and Home Solicitation Sales Act," Chapter 5 of this title, "The Credit Card and Credit Card Bank Act," Chapter 22 of Title 33, the "Insurance Premium Finance Company Act," Part 5 of Article 3 of Chapter 12 of Title 44, relating to pawnbrokers, and, except as provided in Code Section 7-4-3, Article 2 of Chapter 1 of Title 10, the "Motor Vehicle Sales Finance Act." (Laws 1822, Cobb's 1851 Digest, p. 393; Laws 1845, Cobb's 1851 Digest, p. 393; Code 1863, § 2022; Code 1868, § 2023; Ga. L. 1873, p. 52, §§ 2-4; Code 1873, § 2050; Ga. L. 1878-79, p. 184, § 3; Code 1882, §§ 2050, 2057a; Civil Code 1895, §§ 2876, 2886; Civil Code 1910, §§ 3426, 3436; Code 1933, § 57-101; Ga. L. 1975, p. 370, § 1; Ga. L. 1979, p. 355, § 1; Ga. L. 1983, p. 1146, § 1; Ga. L. 1984, p. 22, § 7; Ga. L. 1987, p. 268, § 2; Ga. L. 1988, p. 534, § 1; Ga. L. 1997, p. 143, § 7.)

**Cross references.** — Credit Card and Credit Card Bank Act, § 7-5-1 et seq. Georgia Industrial Loan Act, § 7-3-1 et seq. Insurance Premium Finance Company Act, § 33-22-1 et seq. Retail Installment and Home Solicitation Sales Act, § 10-1-1 et seq. Illegal payday loans, § 16-17-1 et seq.

**Law reviews.** — For article surveying 1979 legislative developments in commercial law, see 31 Mercer L. Rev. 13 (1979). For article on Georgia's usury laws and interest on interest, see 8 Ga. St. U.L. Rev. 291 (1992).

For note discussing the reservation of interest at highest lawful rate as constituting usury, see 1 Ga. L. Rev. No. 2 p. 38 (1927). For note discussing problems with profits generated by escrow account, and proposing federal legislative reform, see 10 Ga. St. B.J. 618 (1974). For note discussing whether a holder in due course takes free of claims of violations of the usury laws, see 12 Ga. L. Rev. 814 (1978).



## JUDICIAL DECISIONS

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## General Consideration

**Editor's notes.** — Many of the cases cited below were decided under this Code section as it read prior to the 1983 amendment, which extensively rewrote this Code section.

**Purpose of section.** — Purpose of the statute against usury (see O.C.G.A. § 7-4-2) is at most, only a check on the conscience of the lender. The necessity to borrow on one hand, and greed on the other, prompted the legislature, no doubt, to fix from time to time a limit on the value of money. This value is merely arbitrary in the legislative mind. *Green v. Equitable Mtg. Co.*, 107 Ga. 536, 33 S.E. 869 (1899).

**Rate chargeable where not named in contract.** — Former Code 1933, § 57-101 (see O.C.G.A. § 7-4-2) sets forth interest rate chargeable where none is named in contract. *Hopkins v. West Publishing Co.*, 106 Ga. App. 596, 127 S.E.2d 849 (1962).

**Distinction between legal interest and lawful interest.** — Generally, the terms legal interest and lawful interest have different meanings. The former means exact rate of interest named in statute, while latter means anything up to maximum rate which law allows. *Daniel v. Gibson*, 72 Ga. 367, 53 Am. R. 845 (1884).

**Legal interest rates are prima facie "equitable"** and any award deviating from the legal rates must be based on sufficient evidence demonstrating that another rate is appropriate. *Atlantic States Constr., Inc. v. Beavers*, 169 Ga. App. 584, 314 S.E.2d 245 (1984).

**Promise of liberal interest will not justify more than the legal interest.** *Weaver v.*

*Chauncey*, 43 Ga. 343 (1871).

**These provisions apply to counties**, as well as to individuals. A county is bound to pay eight percent interest when that rate is specified in writing, if there is compliance with all other legal requirements. *Americus Grocery Co. v. Pitts Banking Co.*, 169 Ga. 70, 149 S.E. 776 (1929), overruled on another point, *Marion County v. First Nat'l Bank*, 193 Ga. 263, 18 S.E.2d 475 (1942).

**Applicability to national banks of state laws regulating interest rate.** — See *Cooper v. National Bank*, 21 Ga. App. 356, 94 S.E. 611 (1917), cert. denied, 246 U.S. 670, 38 S. Ct. 423, 62 L. Ed. 931 (1918), aff'd, 251 U.S. 108, 40 S. Ct. 58, 64 L. Ed. 171 (1919). See also 12 USC §§ 85 and 86, and annotations relating thereto.

**Federal savings and loan association subject to usury laws.** — Federal savings and loan association doing business in this state is subject to usury laws and in making loans must comply with provisions thereof. However, such association may require borrower to pay necessary initial charges in connection with making of loan. *First Fed. Sav. & Loan Ass'n v. Norwood Realty Co.*, 212 Ga. 524, 93 S.E.2d 763 (1956).

**Construction of Industrial Loan Act, §§ 7-4-1, 7-4-18 and this section as to pawn-brokers.** — See *Wall v. Lewis*, 192 Ga. 652, 16 S.E.2d 430 (1941).

**Industrial Loan Act operates in same manner generally as usury statute.** — The Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., operates generally upon entire class of subjects with which it deals, uniformly throughout state and in same manner generally as usury statute. *Talley v. Sun Fin. Co.*, 223 Ga.

419, 156 S.E.2d 55 (1967).

**Acts 1912, p. 144 (see O.C.G.A. § 7-4-10(a)) was not invalid as special law** for which provision had been made by Civil Code 1910, §§ 3426 and 3436 (see O.C.G.A. § 7-4-2). *South Ga. Mercantile Co. v. Lance*, 143 Ga. 530, 85 S.E. 749 (1915).

**Section not repealed by §§ 36-11-3 through 36-11-6.** — Former Code 1933, § 23-1605 (see O.C.G.A. §§ 36-11-3 through 36-11-6) did not expressly or impliedly repeal former Code 1933, §§ 57-101 and 57-110 (see O.C.G.A. §§ 7-4-2, 7-4-15), and former Code 1933 § 14-207 (see O.C.G.A. § 11-3-108). They all were to be considered together, and when so considered, the sections first mentioned contemplate administrative action by county officers in regard to order in which lawful county orders should be paid. *Marion County v. First Nat'l Bank*, 193 Ga. 263, 18 S.E.2d 475 (1942).

**Floating interest rates under P.L. 93-501.** — The 1975 amendments to former Code 1933, § 57-101 (see O.C.G.A. § 7-4-2) were not intended to supersede floating interest rates permitted by Public Law 93-501. *Kennedy v. Brand Banking Co.*, 245 Ga. 496, 266 S.E.2d 154 (1980).

**Liquidated damages for nonpayment of money cannot exceed lawful interest.** — No damages for mere nonpayment of money can ever be so liquidated between parties as to evade provisions of law which fix rate of interest. *Clark, Austin & Smith v. Kay*, 26 Ga. 403 (1858).

**Lender may recover annual interest payments when due, whether principal is due or not.** — Maker of note having expressly contracted to pay interest annually, holder is entitled to recover it when due, whether principal is due or not. *Calhoun v. Marshall*, 61 Ga. 275, 34 Am. R. 99 (1878); *Ray v. Pease*, 97 Ga. 618, 25 S.E. 360 (1895).

**Underwriting is not an agreement to loan money.** *Stewart v. Miller & Co.*, 161 Ga. 919, 132 S.E. 535, 45 A.L.R. 599 (1926).

**Liability of guarantors where no rate stated.** — When guaranty, entered into by separate instrument, does not contain stipulated interest rate, guarantors are liable only for legal rate of 7 percent annually. FDIC v. Willis, 497 F. Supp. 272 (S.D. Ga. 1980).

**Promise to pay 5 percent for attorney fees should suit arise.** — A promissory note contained the promise to pay 7 percent interest

and 5 percent for attorneys fees, if the note should be collected by suit. The promise to pay the attorneys fees is a part of the principal debt. *Baxter v. Bates*, 69 Ga. 587 (1882).

**Facts substantially complying with section.**

— See *Tribble v. Anderson*, 63 Ga. 31 (1878); *Green v. Equitable Mtg. Co.*, 107 Ga. 536, 33 S.E. 869 (1899); *Stewart v. Slocumb*, 120 Ga. 762, 48 S.E. 311 (1904).

**Cited in** *Houser v. Planters' Bank*, 57 Ga. 95 (1876); *Daniel v. Gibson*, 72 Ga. 367, 53 Am. R. 845 (1884); *Partridge v. William's Sons*, 72 Ga. 807 (1884); *Cleghorn v. Greeson*, 77 Ga. 343 (1886); *Crane v. Goodwin*, 77 Ga. 362 (1886); *Jackson v. Garner*, 79 Ga. 415, 7 S.E. 213 (1887); *Mackenzie v. Flannery & Co.*, 90 Ga. 590, 16 S.E. 710 (1892); *Union Sav. Bank & Trust Co. v. Dottenheim*, 107 Ga. 606, 34 S.E. 217 (1899); *Mohr-Weil Lumber Co. v. Russell*, 109 Ga. 579, 34 S.E. 1005 (1900); *Harrell v. Blount*, 112 Ga. 711, 38 S.E. 56 (1901); *McCall v. Herring*, 116 Ga. 235, 42 S.E. 468 (1902); *Howell v. Pennington*, 118 Ga. 494, 45 S.E. 272 (1903); *Ver Nooy v. Pitner*, 17 Ga. App. 29, 86 S.E. 456 (1915); *Croom v. Jordan*, 20 Ga. App. 802, 93 S.E. 538 (1917); *Long v. Gresham*, 148 Ga. 170, 96 S.E. 211 (1918); *Glynn County v. Dubberly*, 148 Ga. 290, 96 S.E. 566 (1918); *Bank of Lumpkin County v. Justus*, 150 Ga. 286, 103 S.E. 794 (1920); *Flint River Pecan Co. v. Fry*, 29 F.2d 457 (5th Cir. 1928); *Pitts v. Pease*, 39 F.2d 14 (5th Cir. 1930); *Leathers v. Auto Sales Co.*, 46 Ga. App. 85, 166 S.E. 838 (1932); *Folsom v. Continental Adjustment Corp.*, 48 Ga. App. 435, 172 S.E. 833 (1934); *Penn Mut. Life Ins. Co. v. Marshall*, 49 Ga. App. 287, 175 S.E. 412 (1934); *Nash Loan Co v. Dixon*, 181 Ga. 297, 182 S.E. 23 (1935); *Gore v. Industrial Loan & Sav. Co.*, 52 Ga. App. 401, 183 S.E. 499 (1936); *Osborne v. National Realty Mfg. Co.*, 182 Ga. 892, 187 S.E. 56 (1936); *Ellis v. Williams*, 56 Ga. App. 181, 192 S.E. 491 (1937); *Denson v. Peoples Bank*, 58 Ga. App. 518, 199 S.E. 324 (1938); *Peoples Bank v. Mayo*, 61 Ga. App. 877, 8 S.E.2d 405 (1940); *Kent v. Hibernia Sav. Bldg. & Loan Ass'n*, 193 Ga. 546, 19 S.E.2d 264 (1942); *Southern Feed Stores v. Sanders*, 193 Ga. 884, 20 S.E.2d 413 (1942); *Hartsfield Co. v. Watkins*, 67 Ga. App. 411, 20 S.E.2d 440 (1942); *United States v. A Certain Tract or Parcel of Land*, 47 F. Supp. 30 (S.D. Ga. 1942); *Butler v. Reisman*, 70 Ga. App. 654, 29

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S.E.2d 433 (1944); *Graham v. Lynch*, 206 Ga. 301, 57 S.E.2d 86 (1950); *McConnell v. Shropshire*, 80 Ga. App. 677, 57 S.E.2d 293 (1950); *Carroll v. Taylor*, 87 Ga. App. 815, 75 S.E.2d 346 (1953); *M.B. Dale, Inc. v. Dawson County Bank*, 112 Ga. App. 560, 145 S.E.2d 619 (1965); *Harrison v. Arrendale*, 113 Ga. App. 118, 147 S.E.2d 356 (1966); *Colter v. Consolidated Credit Corp.*, 115 Ga. App. 408, 154 S.E.2d 713 (1967); *Service Loan & Fin. Corp. v. McDaniel*, 115 Ga. App. 548, 154 S.E.2d 823 (1967); *Cochran v. Bank of Hancock County*, 118 Ga. App. 100, 162 S.E.2d 765 (1968); *Fried v. Morris & Eckels Co.*, 118 Ga. App. 595, 164 S.E.2d 732 (1968); *Vezzani v. Tallant*, 121 Ga. App. 67, 172 S.E.2d 858 (1970); *Lewis v. Termplan, Inc.*, 124 Ga. App. 507, 184 S.E.2d 473 (1971); *Poteat v. Butler*, 231 Ga. 187, 200 S.E.2d 741 (1973); *Finlay v. Oxford Constr. Co.*, 139 Ga. App. 801, 230 S.E.2d 69 (1976); *Green v. Decatur Fed. Sav. & Loan Ass'n*, 143 Ga. App. 368, 238 S.E.2d 740 (1977); *Adcock v. First Nat'l Bank*, 144 Ga. App. 394, 241 S.E.2d 289 (1977); *Plunkett v. Francisco*, 430 F. Supp. 235 (N.D. Ga. 1977); *Farmers Mut. Exch. of Wrens, Inc. v. Rabun*, 145 Ga. App. 798, 245 S.E.2d 52 (1978); *Reid v. National Bank*, 149 Ga. App. 834, 256 S.E.2d 82 (1979); *Gorlin v. First Nat'l Bank*, 150 Ga. App. 637, 258 S.E.2d 290 (1979); *Sumner v. Adel Banking Co.*, 244 Ga. 73, 259 S.E.2d 32 (1979); *Peterson v. Newton*, 151 Ga. App. 852, 261 S.E.2d 763 (1979); *Commercial Credit Plan, Inc. v. Parker*, 152 Ga. App. 409, 263 S.E.2d 220 (1979); *Williams v. Public Fin. Corp.*, 598 F.2d 349 (5th Cir. 1979); *Kellos v. Parker-Sharpe, Inc.*, 245 Ga. 130, 263 S.E.2d 138 (1980); *Laminoirs-Trefileries-Cableries De Lens, S.A. v. Southwire Co.*, 484 F. Supp. 1063 (N.D. Ga. 1980); *Lennon v. Aeck Assocs.*, 157 Ga. App. 294, 277 S.E.2d 289 (1981); *Thompson v. Hurt*, 159 Ga. App. 656, 284 S.E.2d 671 (1981); *FDIC v. Lattimore Land Corp.*, 656 F.2d 139 (5th Cir. 1981); *Barge & Co. v. City of Atlanta*, 161 Ga. App. 675, 288 S.E.2d 98 (1982); *Prince v. Lee Roofing Co.*, 161 Ga. App. 181, 288 S.E.2d 135 (1982); *Willis v. Rabun County Bank*, 161 Ga. App. 151, 291 S.E.2d 52 (1982); *Scott v. Leder*, 164 Ga. App. 334, 297 S.E.2d 103 (1982); *Bulman v. First Nat'l Bank*, 165

Ga. App. 843, 303 S.E.2d 29 (1983); *Varner v. Century Fin. Corp.*, 253 Ga. 27, 317 S.E.2d 178 (1984); *Ehrman v. Manning*, 177 Ga. App. 442, 339 S.E.2d 652 (1986); *Gold Kist Peanuts v. Alberson*, 178 Ga. App. 253, 342 S.E.2d 694 (1986); *McDermott v. Middle E. Carpet Co.*, 811 F.2d 1422 (11th Cir. 1987); *Weprin v. Peterson*, 736 F. Supp. 1131 (N.D. Ga. 1988); *Moore v. Comfed Sav. Bank*, 908 F.2d 834 (11th Cir. 1990); *American Mini-Storage, Marietta Blvd., Ltd. v. Investguard, Ltd.*, 196 Ga. App. 862, 397 S.E.2d 199 (1990); *Equicor, Inc. v. Stamey*, 216 Ga. App. 375, 454 S.E.2d 550 (1995); *Felker v. Chipley*, 246 Ga. App. 296, 540 S.E.2d 285 (2000); *S & A Indus., Inc. v. Bank Atlanta*, 247 Ga. App. 377, 543 S.E.2d 743 (2000); *Colonial Bank v. Boulder Bankcard Processing, Inc.*, 254 Ga. App. 686, 563 S.E.2d 492 (2002).

**Interest and Other Charges****Method of expressing interest rate. —**

The requirement that the rate of interest be expressed in simple interest terms does not mandate numerical terminology but the requirement is met by the expression of the method of computation of interest by reference to "prime" or other indices such as "base." *1600 Capital Co. v. Bankers First Fed. Sav. & Loan Ass'n*, 187 Ga. App. 504, 370 S.E.2d 668 (1988).

A note must state the rate of interest in simple interest terms. *Orix Credit Alliance, Inc. v. CIT Group/Equipment Fin., Inc.*, 230 Bankr. 213 (Bankr. M.D. Ga. 1998).

**Computation of interest on loans for less than or longer than a year. —** See *Patton v. Bank of La Fayette*, 124 Ga. 965, 53 S.E. 664, 5 L.R.A. (n.s.) 592, 4 Ann. Cas. 639 (1906), overruled on other grounds, *Sharpe v. Department of Transp.*, 267 Ga. 267, 476 S.E.2d 722 (1996).

**Civil Code 1895, § 2886 (see O.C.G.A. § 7-4-2) spoke of years and not of months.** A legal year is 365 days. *Patton v. Bank of La Fayette*, 124 Ga. 965, 53 S.E. 664, 5 L.R.A. (n.s.) 592, 4 Ann. Cas. 639 (1906), overruled on other grounds, *Sharpe v. Department of Transp.*, 267 Ga. 267, 476 S.E.2d 722 (1996).

**Lender's charge for service not rendered or to be rendered is interest. —** Lender's charge for service which was not in fact rendered or to be rendered the borrower is a charge for use of money advanced and is therefore interest. *Williams v. First Bank &*



Trust Co., 154 Ga. App. 879, 269 S.E.2d 923 (1980).

**Interest on liquidated demand not part of debt.** — Where purchase price of machinery for necessary improvement of public roads becomes a liquidated demand, as by issuance of county warrant drawn on county treasurer by county commissioners, payable to vendor for purchase price, interest which may thereafter lawfully accrue upon warrant is incidental, and is not to be counted as part of debt for which warrant was issued. *Marion County v. First Nat'l Bank*, 193 Ga. 263, 18 S.E.2d 475 (1942).

**Prepayment penalty clause was permissible** under O.C.G.A. § 7-4-21(a)(1), where the clause was in reality a charge and use of the term "interest" in the clause was merely a device for determining the amount of the charge. *In re Curtis*, 83 Bankr. 853 (Bankr. S.D. Ga. 1988).

**Escrow account charges** in a loan for the purchase of real property did not amount to a disguised interest charge, where there was a realistic correspondence between the monthly escrow deposit and the annual tax liability and insurance premium covering the property. *In re Curtis*, 83 Bankr. 853 (Bankr. S.D. Ga. 1988).

**Lender need not pay interest on funds escrowed for a valid business reason.** — There is no requirement as a matter of law for lender to pay borrower interest on funds escrowed for valid business reasons such as a reserve for replacement of deteriorating equipment. *Knight v. First Fed. Sav. & Loan Ass'n*, 151 Ga. App. 447, 260 S.E.2d 511 (1979).

**Lease late charge provision.** — While a landlord can recover unpaid rent and is also entitled to recover the legal rate of interest on the unpaid rental money, it does not follow that an agreement in a lease providing for a late charge when the rent is not timely paid must comply with O.C.G.A. § 7-4-2. *Krupp Realty Co. v. Joel*, 168 Ga. App. 480, 309 S.E.2d 641 (1983).

**Prejudgment interest.** — Having found there was no jury issue as to whether the buyers owed the earnest money payment plus interest to sellers under the contract, as well as under principles of promissory estoppel, the trial court erred in failing to award such interest for the period money was due until final judgment. *Ware v. Renfroe*, 231 Ga. App. 529, 499 S.E.2d 907 (1998).

Because the defendant neither filed a compulsory counterclaim nor pled a set-off as an affirmative defense, there was no error in the trial court's failure to provide for a set-off for lease deposits prior to calculating pre-judgment and post-judgment interest. *American Medical Transp. Group, Inc. v. Glo-An, Inc.*, 235 Ga. App. 464, 509 S.E.2d 738 (1998).

**Prejudgment interest in excess of statutory amount.** — Where the claim was undisputed, the defendant was entitled to pre-judgment interest at the rate of seven percent per annum from the date the debt became due and the trial court's judgment of prejudgment interest of 18% per annum was in excess of the statutorily required amount. *Turner Constr. Co. v. Electrical Distribs., Inc.*, 202 Ga. App. 726, 415 S.E.2d 325 (1992).

Trial court erred in awarding the prevailing party in a contract dispute prejudgment interest at the rate of 12 percent per annum; instead, the legal rate of interest of only 7 percent per annum pursuant to O.C.G.A. § 7-4-2(a) was appropriate. *Murray v. Barrett*, 257 Ga. App. 438, 571 S.E.2d 448 (2002).

**Deposits in court not subject to prejudgment and postjudgment interest.** — In a contract action, a party was not entitled to prejudgment and postjudgment interest where deposits were made pursuant to the requirements of O.C.G.A. § 9-11-67. *Sacha v. Coffee Butler Serv., Inc.*, 215 Ga. App. 280, 450 S.E.2d 704 (1994).

## Usury

### 1. In General

**Usury defined.** — Usury is excess over legal interest charged by lender for use of his money. *Sledd v. Pilot Life Ins. Co.*, 52 Ga. App. 326, 183 S.E. 199 (1935).

**Effect of criminal usury.** — A loan violative of the criminal usury statute is illegal, with the result that the lender forfeits the interest but may collect the principal. *Norris v. Sigler Daisy Corp.*, 260 Ga. 271, 392 S.E.2d 242 (1990).

**Intent required.** — Under law of Georgia, intent to circumvent usury laws is prerequisite to existence of usury. *Camilla Cotton Oil Co. v. Spencer Kellogg & Sons*, 257 F.2d 162 (5th Cir. 1958).

**Usury (Cont'd)****1. In General (Cont'd)****Four elements of usurious transaction. —**

There are four elements of a usurious transaction under Georgia law: (1) loan or forbearance of money, either express or implied; (2) upon understanding that principal shall or may be returned; and that (3) for such loan or forbearance a greater profit than is authorized by law shall be paid; and (4) that contract was made with intent to violate the law. Element of intent may be implied if all other elements are expressed upon face of contract. *Bank of Lumpkin v. Farmers State Bank*, 161 Ga. 801, 132 S.E. 221 (1926); *Duderwicz v. Sweetwater Sav. Ass'n*, 595 F.2d 1008 (5th Cir. 1979); *Hershiser v. Yorkshire Condominium Ass'n*, 201 Ga. App. 185, 410 S.E.2d 455 (1991).

**Substance of transaction examined in determining whether usurious. —** Court must look not at form and words, but at substance of transaction; and as, on the one hand, it should not pay attention to words of transaction, or manner in which it was negotiated, if substance of it went to defeat statute against usury, so, on the other hand, it ought not to rely upon words or form of transaction, if in substance such transaction was legal. *Murdock Acceptance Corp. v. Wagon*, 587 F.2d 764 (5th Cir. 1979).

In determining whether contract is usurious, substance of transaction will be critically inspected and analyzed; for name by which transaction is denominated is altogether immaterial if it appears that a loan of money was the basis of agreement which is under consideration. *Bank of Lumpkin v. Farmers State Bank*, 161 Ga. 801, 132 S.E. 221 (1926).

**Usurious interest violates section. —** Usury being an excess of legal interest, it was a violation of former Code 1933, § 57-101 (see O.C.G.A. § 7-4-2) to reserve and take usury or to contract to reserve and take usury. *Newcomb v. Niskey's Lake, Inc.*, 190 Ga. 565, 10 S.E.2d 51, answer conformed to, 63 Ga. App. 811, 12 S.E.2d 160 (1940).

It was a violation of former Code 1933, § 57-101 (see O.C.G.A. § 7-4-2) to reserve and take usurious interest, or to contract to reserve and take usurious interest. *Duderwicz v. Sweetwater Sav. Ass'n*, 595 F.2d 1008 (5th Cir. 1979).

**Effect of repealing usury limit. —** In the absence of a savings clause, repeal of a usury

limit operates retroactively to lift the penalty for usury. *Doyle v. Southern Guar. Corp.*, 795 F.2d 907 (11th Cir. 1986), cert. denied, 484 U.S. 926, 108 S. Ct. 289, 98 L. Ed. 2d 249 (1987).

**Where defense of usury was not raised until after the 1983 amendment of O.C.G.A. § 7-4-2** became effective, the interest rates at issue are legal so long as they conform to the limits contained in O.C.G.A. § 7-4-2(a)(1). *Ward v. Hudco Loan Co.*, 254 Ga. 294, 328 S.E.2d 729 (1985).

**Amortization of initial charges. —** Initial charges in the form of discount points and other interest charges during the first month of the loan should be amortized over the life of the loan to calculate what interest rate was charged "per month." *Johnson v. Fleet Fin., Inc.*, 785 F. Supp. 1003 (S.D. Ga. 1992), aff'd, 4 F.3d 946 (11th Cir. 1993).

**Actual declining principal balance method** should be used in determining whether irregularly amortized loan is usurious, because usury on a particular loan can only be determined by proper reference to actual outstanding principal balance on that loan. *Southern Fed. Sav. & Loan Ass'n v. Lyle*, 249 Ga. 284, 290 S.E.2d 455 (1982).

**Actual performance of usurious agreement not required. —** Taint of usury results not from payment of usurious interest, but from agreement to do so, whether performed or unperformed. *Duderwicz v. Sweetwater Sav. Ass'n*, 595 F.2d 1008 (5th Cir. 1979).

Terms of contract rather than actual turn of events are to be used in computing usury. *Knight v. First Fed. Sav. & Loan Ass'n*, 151 Ga. App. 447, 260 S.E.2d 511 (1979).

**Usurious contracts unlawful only as to usurious interest. —** Contracts to pay usury are unlawful, but only as to the usurious interest; but mere illegality in consideration is not sufficient to defeat rights of an innocent holder. *Weed v. Gainesville, Jefferson & S. R.R.*, 119 Ga. 576, 46 S.E. 885 (1904).

**Substance of transaction controls. —** The law recognizes a seller's right to make a difference in the seller's cash price and the seller's time price for his property; and, though in a given instance this difference may exceed the maximum allowable rate, usury laws are not applicable. If, however, property is sold at a cash price, and time is given by vendor to purchaser upon a portion

of the purchase money, and a greater rate of interest than that allowed by law is charged on such deferred payments, the contract is usurious. *Murdock Acceptance Corp. v. Wagnon*, 587 F.2d 764 (5th Cir. 1979).

While it is lawful and not usurious to charge one price for property sold for cash and a higher price for same property if sold on credit, if contract is that property be sold at cash valuation, and that certain payments are to be deferred in consideration of a greater rate of interest than that allowed by law, such contract is usurious. *Irvin v. Mathews*, 75 Ga. 739 (1885); *Rushing v. Worsham & Co.*, 102 Ga. 825, 30 S.E. 541 (1898); *Ozmore v. Coram*, 133 Ga. 250, 65 S.E. 448 (1909); *Plastics Dev. Corp. v. Flexible Prods. Co.*, 112 Ga. App. 460, 145 S.E.2d 655 (1965).

**Section inapplicable to note outside provisions.** — Defendant did not prevail on defendant's claim of usury because the amount of the note, \$2.3 million, is outside the provisions of Georgia's usury statute. *Barton v. Marubeni Am. Corp.*, 204 Ga. App. 346, 419 S.E.2d 342 (1992).

**Parol evidence rule inapplicable to usurious contracts.** — While it is well established that parol evidence cannot be used to add to or change terms of valid written contract, the rule does not apply to contract which is usurious and, therefore, invalid. *Pickens Inv. Co. v. Jones*, 82 Ga. App. 850, 62 S.E.2d 753 (1950).

**Parol promise found valid.** — Where a promissory note on its face bore interest at 6 percent, and, after it fell due and was unpaid, the makers in consideration of the holders delaying to enforce collection agreed in parol to pay 8 percent interest thereon and for two years interest was paid at this rate, such payments were valid, and interest in excess of 6 percent could neither be recovered, nor thereafter applied as a credit on principal of the note. *Strickland v. Bank of Cartersville*, 141 Ga. 565, 81 S.E. 886 (1914).

**Showing required where loan made at less than maximum rate.** — Where loan had been made at less than maximum rate of interest, debtor must prove that escrow arrangement was a device to exact interest in excess of lawful rate, and the debtor must show exact amount of claimed excess and how it was computed. *Knight v. First Fed. Sav.*

*& Loan Ass'n*, 151 Ga. App. 447, 260 S.E.2d 511 (1979).

**To purge contract of usury** it must be wholly abandoned or cancelled, and a new obligation undertaken containing no part of the usury. *Duderwicz v. Sweetwater Sav. Ass'n*, 595 F.2d 1008 (5th Cir. 1979).

**Lender cannot unilaterally purge transaction of taint.** — Allegedly usurious loan transaction cannot be purged of usurious taint through unilateral action of lender. *Duderwicz v. Sweetwater Sav. Ass'n*, 595 F.2d 1008 (5th Cir. 1979).

## 2. Transactions Held Usurious

**Only when prepaid sums and stipulated interest together exceed lawful interest is a transaction usurious.** *Scheil v. Georgia Fed. Sav. & Loan Ass'n*, 154 Ga. App. 714, 269 S.E.2d 881 (1980).

**Taking or reserving of maximum interest in advance is usurious.** — Taking or reserving in advance of interest at highest legal rate, whether in short or long term loan, is usurious. *Haley v. Covington*, 19 Ga. App. 782, 92 S.E. 297 (1917); *Kent v. Hibernia Sav., Bldg. & Loan Ass'n*, 190 Ga. 764, 10 S.E.2d 759 (1940), later appeal, 193 Ga. 546, 19 S.E.2d 264 (1942).

**Deed to secure usurious loan is void.** — Reserving of interest in advance at highest legal rate on a loan, whether it be a short or long-term loan, is usurious; and deed to land given to secure promissory note for such a loan is void on account of usury. *Loganville Banking Co. v. Forrester*, 143 Ga. 302, 84 S.E. 961, 1915D L.R.A. 1195 (1915); *Reese v. Bloodworth*, 146 Ga. 355, 91 S.E. 120 (1917).

**Commission deducted from loan is usurious.** — Under former Code 1933, § 57-101 (see O.C.G.A. § 7-4-2), charge by lender as a commission, deducted from a loan evidenced by bonds of the borrower, which carry full rate of lawful interest was usury. *Newcomb v. Niskey's Lake, Inc.*, 190 Ga. 565, 10 S.E.2d 51, answer conformed to, 63 Ga. App. 811, 12 S.E.2d 160 (1940).

**Combining loans to reach usury limit prohibited.** — Former § 7-4-7, which removed the former nine percent rate ceiling on loans exceeding \$100,000 in certain situations, was not applicable where there were eleven separate loans and notes, none of which amounted to \$100,000, although the total principal balance was over \$100,000,



**Usury (Cont'd)****2. Transactions Held Usurious (Cont'd)**

and although the borrower paid the interest on all eleven notes with one check. *Henson v. Columbus Bank & Trust Co.*, 770 F.2d 1566 (11th Cir. 1985) (decided under former § 7-4-7).

**Escrow fund used as device to extract excess interest is usurious.** — An escrow fund is usurious only when the lender's requirement that the borrower maintain such a deposit is in fact merely a scheme or device by which the intent to extract excess interest is concealed. *Knight v. First Fed. Sav. & Loan Ass'n*, 151 Ga. App. 447, 260 S.E.2d 511 (1979).

**Stipulation to pay taxes on bonds is usurious.** — Stipulation in bonds to pay, in addition to lawful interest, a percentage of federal income taxes that might be imposed upon the bonds is usurious. *Newcomb v. Niskey's Lake, Inc.*, 190 Ga. 565, 10 S.E.2d 51, answer conformed to, 63 Ga. App. 811, 12 S.E.2d 160 (1940).

**Petition sufficiently pleading usury.** — Petition alleging: (1) sum upon which paid; (2) time when contract was made; (3) when payable; and (4) amount of usury agreed upon, sufficiently pleads usury. *Pickens Inv. Co. v. Jones*, 82 Ga. App. 850, 62 S.E.2d 753 (1950).

**Condition precedent to loan charging maximum rate that borrower pay another's debt.** — Where lender requires, as condition precedent to making loan upon which full legal rate of interest is expressly charged, that borrower shall assume and pay off a promissory note held by lender against one who is known by lender to be insolvent, and whose debt borrower is under no obligation to pay, the transaction is usurious. *Bishop v. Exchange Bank*, 114 Ga. 962, 41 S.E. 43 (1902).

**3. Transactions Held Not Usurious**

**Excess over legal rate paid for other considerations not usurious.** — Where excess over legal interest is paid for other good and valuable considerations beyond mere use of money, it is not usury. *Sledd v. Pilot Life Ins. Co.*, 52 Ga. App. 326, 183 S.E. 199 (1935).

**Minor mistake held not usury.** — Contract not usurious where by mistake a few cents more than legal rate is charged. *Rushing v.*

*Willingham*, 105 Ga. 166, 31 S.E. 154 (1898); *Loganville Banking Co. v. Forrester*, 143 Ga. 302, 84 S.E. 961, 1915D L.R.A. 1195 (1915).

**Interest charged on interest due is not usurious.** — Contract to pay maximum rate of interest per annum semi-annually, with interest on semi-annual payments of interest after due, did not constitute usury under former Civil Code 1910, § 3436 (see O.C.G.A. § 7-4-2). *Pendergrass v. New York Life Ins. Co.*, 163 Ga. 671, 137 S.E. 36 (1927).

**Interest not usurious based on principal.** — Where the principal amount of homeowners' mortgage was \$61,850 with accrued interest at the rate of 13 percent per year, this interest was not in violation of this section. *English v. Liberty Mtg. Corp.*, 205 Ga. App. 141, 421 S.E.2d 286 (1992).

**Interest rate based upon a daily charge.** — An interest rate based upon a daily charge equal to the annual rate divided by 360 is not usurious per se. *Mom Corp. v. Chattahoochee Bank*, 203 Ga. App. 847, 418 S.E.2d 74 (1992).

**Interest from maturity upon principal and lawful interest not usurious.** — It is lawful to include in a promissory note amount of interest at legal rate, which will be due at its maturity, and to provide that sum represented by principal and such interest shall bear interest at maximum rate per annum from maturity. *McCrary v. Woodard*, 122 Ga. 793, 50 S.E. 941 (1905).

**Note covering loan, lawful interest and antecedent debt not usurious.** — Where debtor who has been adjudicated bankrupt, but who has not obtained a discharge, arranges with one of the debtor's creditors for a loan of money on condition that the debtor will execute a note to cover the loan, with lawful interest and also amount of the debtor's previous indebtedness to creditor, such transaction is a valid and enforceable renewal of antecedent debt, and note is not usurious because it contains a promise to pay the antecedent debt. *Cameron v. Meador-Pasley Co.*, 39 Ga. App. 712, 148 S.E. 309 (1929).

**Compensation for professional services by lender not usurious.** — If sum was paid bona fide by way of compensation for professional services rendered by lender, and did not enter into consideration moving lender to make loan, the transaction was not

usurious. *Sanders v. Nicolson*, 101 Ga. 739, 28 S.E. 976 (1897).

**Charge for insurance on security for debt not usurious.** — Where property is conveyed to secure a debt, a stipulation that borrower shall, in addition to legal interest, pay insurance premiums thereon is not usurious. *New England Mtg. Sec. Co. v. Gay*, 33 F. 636 (S.D. Ga. 1888), writ of error dismissed, 145 U.S. 123, 12 S. Ct. 815, 36 L. Ed. 646 (1892).

Premium for insurance required on collateral security for loan not counted as part of interest. *Sledd v. Pilot Life Ins. Co.*, 52 Ga. App. 326, 183 S.E. 199 (1935).

### Forfeiture of Interest

**Usury works forfeiture of all interest under the law.** *Newcomb v. Niskey's Lake, Inc.*, 190 Ga. 565, 10 S.E.2d 51, answer conforming to, 63 Ga. App. 811, 12 S.E.2d 160 (1940).

**Effect of device by which lender exacts usurious interest.** — If agreement is a mere device or subterfuge by which one party was permitted to charge a higher than lawful rate of interest for a loan of money, the agreement would be usurious, and lender can collect no interest at all. *Stewart v. Miller & Co.*, 161 Ga. 919, 132 S.E. 535, 45 A.L.R. 599 (1926).

**Interest not forfeited where claim amended to legal rate.** — Plaintiff did not forfeit any right to interest on an open account for seeking a higher interest rate than that allowed by law where, before trial, plaintiff amended its pleadings to seek the statutorily permitted rate of interest on commercial accounts. *Belvin v. Houston Fertilizer & Grain Co.*, 169 Ga. App. 100, 311 S.E.2d 526 (1983).

### Written Contract

**Absent specification in writing, interest exceeding 7 percent per annum may not be collected.** *Cosby v. A.M. Smyre Mfg. Co.*, 158 Ga. App. 587, 281 S.E.2d 332 (1981).

**Writing requirement applies only to executory promises.** — Civil Code 1910, § 3426 (see O.C.G.A. § 7-4-2), which provided that a contract to pay interest in excess of 7 percent must be in writing, applied only to a contract containing an executory promise to pay such excess interest, and did not apply to a contract where such excess inter-

est had been actually paid and accepted in consideration of a promise to extend time of payment of principal sum. *Lewis v. Citizens' & S. Bank*, 31 Ga. App. 597, 121 S.E. 524 (1924), *aff'd*, 159 Ga. 551, 126 S.E. 392 (1925).

**Designation of interest rate in terms of "prime" was "in writing" and thereby complied with laws of usury.** *Stewart v. National Bank*, 174 Ga. App. 892, 332 S.E.2d 19 (1985).

**Specification of interest in handwriting of debtor, signed by creditor, is sufficient.** *Wofford v. Wyly*, 72 Ga. 863 (1884).

**One seeking 8 percent interest on alleged note must sue upon written instrument providing therefor.** *Ramsey v. Langley*, 86 Ga. App. 544, 71 S.E.2d 863 (1952).

### Acceleration

**By accelerating payment on notes payable on or before maturity, maker avoids paying unearned interest.** *Garner v. Sisson Properties, Inc.*, 198 Ga. 203, 31 S.E.2d 400 (1944).

**Interest on accelerated balance limited to 7 percent absent authorization.** — In suit to recover balance on promissory note, award of interest on accelerated balance was limited to 7 percent per annum, rather than 9 percent which was sought, where there was no language in note authorizing collection of higher rate upon declaration of default. *Atlantic Bank & Trust Co. v. Fox*, 157 Ga. App. 673, 278 S.E.2d 474 (1981).

### Interest after Maturity

**Rate of interest specified in contract runs after maturity as well as before.** *Silvey v. McCool*, 86 Ga. 1, 12 S.E. 175 (1890); *Neal v. Brockhan*, 87 Ga. 130, 13 S.E. 283 (1891).

**Post-maturity interest rate not penalty when same as loan interest rate.** — Post-maturity interest rate on outstanding balance does not constitute penalty or compensation for delay when rate is the same as interest rate of loan itself. *Whitfield v. Termplan, Inc.*, 651 F.2d 383 (5th Cir. 1981).

**Interest called for will extend only if contracted for.** — Where promissory note contained a promise to pay principal, with interest from date at 8 percent, in the absence of agreement, such rate will not extend beyond maturity of note, unless terms of the note itself expressly so provide. *Sherwood v.*

**Interest after Maturity (Cont'd)**

Moore, 35 F. 109 (N.D. Ga. 1888).

**Attorney Fees**

**Reasonable fee to lender's attorney for title examination** was not considered commission for negotiation of loan. *McCall v. Herring*, 118 Ga. 522, 45 S.E. 442 (1903).

**Jury/Court Determinations**

**Unless apparent on face of contract, question of usury is for jury.** — If it is apparent on face of contract, court may declare it to be usurious, but if doubtful question must be resolved by jury. *Pickens Inv. Co. v. Jones*, 82 Ga. App. 850, 62 S.E.2d 753 (1950).

It is incumbent upon one attacking loan to show jury that it is in fact usurious; intent of lender to charge and collect more than legal rate of interest in violation of law is a question for jury. *Knight v. First Fed. Sav. & Loan Ass'n*, 151 Ga. App. 447, 260 S.E.2d 511 (1979).

Question of whether one intends to exact usury by a contrivance or device or whether the alleged charge is bona fide for actual services is for determination of jury. *Bank of Lumpkin v. Farmers State Bank*, 161 Ga. 801, 132 S.E. 221 (1926).

**Claim that transaction is a device to cover up usury raises jury issue.** — Where a transaction is not per se usurious, if it is claimed to be a device to cover up a charge of usury,

question of fact as well as question of law is raised and it should be submitted to jury. *Knight v. First Fed. Sav. & Loan Ass'n*, 151 Ga. App. 447, 260 S.E.2d 511 (1979).

**Section 7-4-12 inapplicable to awards of special master preceding judgment.** — Twelve percent rate of O.C.G.A. § 7-4-12 applies only to judgments; any interest accruing under O.C.G.A. § 22-2-113 for that period of time following award of special master until jury verdict and entry of final judgment is to be at legal interest rate established by O.C.G.A. § 7-4-2. *City of Atlanta v. Wright*, 159 Ga. App. 809, 285 S.E.2d 250 (1981).

**Court orders to pay money bear interest at 7 percent.** — Orders absolute given by inferior courts of this state for payment of money to other persons in liquidation of debts due by said courts draw interest just as other liquidated demands do, that is, those where sum is fixed, ascertained and agreed to be paid, bear interest at rate of 7 percent per annum. *State ex rel. Greer v. Speer*, 33 Ga. 93 (1864).

**Award of prejudgment interest in federal court.** — Admiralty courts have discretion in awarding prejudgment interest, so federal rather than state law controls, and there is no abuse of discretion in a federal court's award of 10% prejudgment interest. The fact that the suit was brought under the court's diversity jurisdiction does not affect this conclusion. *Kilpatrick Marine Piling v. Fireman's Fund Ins. Co.*, 795 F.2d 940 (11th Cir. 1986).

**OPINIONS OF THE ATTORNEY GENERAL**

**Editor's notes.** — Many of the opinions cited below were rendered under this section as it read prior to the 1983 amendment, which extensively rewrote this Code section.

**Usury defined.** — Usury is not the taking of interest from borrower at an unlawful rate, but rather it is receiving from any source a greater sum for use of money than the lawful interest. 1969 Op. Att'y Gen. No. 69-53.

**Carrying charges are limited to legal rate plus actual expenses incurred.** — Where no distinction is made between cash price and time price of an article, carrying charges are limited to legal rate of interest, plus any actual expense incurred by vendor incident to sale, such as fee for recording security

instrument and reasonable protective insurance. 1954-56 Op. Att'y Gen. p. 448.

**Service charge probably usurious.** — If monthly service charge plan does not come within any specific exception set out by state law, then charge of 1 to 1 1/2 percent per month of unpaid balance would probably be usurious. 1969 Op. Att'y Gen. No. 69-45.

**Construction with Industrial Loan Act.** — A merchant who makes cash advances of \$3,000.00 or less is subject to the provisions of the Georgia Industrial Loan Act rather than O.C.G.A. § 7-4-2(a)(2), unless the merchant charges 8 percent simple interest per annum or less. 1984 Op. Att'y Gen. No. 84-79.



## RESEARCH REFERENCES

**Am. Jur. 2d.** — 45 Am. Jur. 2d, Interest and Usury, §§ 1, 3.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, §§ 3-5, 37.

**ALR.** — Provision in statute or ordinance limiting rate of interest per annum as precluding requirement of payment at maximum rate at intervals of less than a year, 29 ALR 1109.

Validity of agreement to pay interest on interest, 37 ALR 325; 76 ALR 1484.

Construction of contractual provisions as to interest as regards time from which interest is to be computed, 69 ALR 958.

Delay in paying over proceeds of loan to borrower as affecting question of usury, 76 ALR 1467.

Obligations covering deferred payments of purchase money, or extension thereof, as loan or forbearance within usury laws, 91 ALR 1105.

Validity, construction, and effect of express agreement releasing cause of action or defense based on exaction of usury, 99 ALR 600.

Termination of interest, or reduction of interest rate, on deposit of public funds, 107 ALR 1210.

Rate of interest chargeable against guardians, executors or administrators, and trustees, 112 ALR 333.

Note or other obligation payable on demand for an amount in excess of amount actually loaned as usurious, 127 ALR 460.

Finance charge in connection with conditional sale contract as usury, 143 ALR 238.

Usury as affecting conditional sale contract, 152 ALR 598.

Usury as predictable upon transaction in form a sale or exchange of commercial paper or other choses in action, 165 ALR 626.

Retrospective application and effect of statutory provision for interest or changed rate of interest, 4 ALR2d 932; 40 ALR4th 147; 41 ALR4th 694.

Computing interest on basis of 360 days in year, 30 days in month, or the like, as usury, 35 ALR2d 842.

Taking or charging interest in advance as usury, 57 ALR2d 630.

Interest upon arrearages or unpaid accumulations of annuities, 66 ALR2d 857.

Usury as affected by repayment of, or borrower's option to repay, loan before maturity, 75 ALR2d 1265.

What is "compound interest" within meaning of statutes prohibiting the charging of such interest, 10 ALR3d 421.

Advance in price for credit sale as compared with cash sale as usury, 14 ALR3d 1065.

Usury: effect of borrower's agreement to pay, guarantee, or secure some other debt owed to or by lender, 31 ALR3d 763.

Validity and construction of provision (escalator clause) in land contract or mortgage that rate of interest payable shall increase if legal rate is raised, 60 ALR3d 473.

Reformation of usurious contract, 74 ALR3d 1239.

Validity under usury laws of provision calling for repayment of principal which exceeds sum loaned by amount reflecting any decline in purchasing power of dollar, 90 ALR3d 763.

Contingency as to borrower's receipt of money or other property from which loan is to be repaid as rendering loan usurious, 92 ALR3d 623.

Leaving part of loan on deposit with lender as usury, 92 ALR3d 769.

Application of usury laws to transactions characterized as "leases," 94 ALR3d 640.

Validity and construction of state statute or rule allowing or changing rate of prejudgment interest in tort actions, 40 ALR4th 147.

Retrospective application and effect of state statute or rule allowing interest or changing rate of interest on judgments or verdicts, 41 ALR4th 694.

**7-4-3. Finance charge on retail installment contracts for manufactured homes and motor vehicles subject to federal law; stating of federal provisions in contract.**

(a) Notwithstanding the provisions of subsections (a) through (c) of Code Section 10-1-33, any retail installment contract pertaining to:

(1) Any manufactured home with a cash sale price of more than \$3,000.00; or

(2) Any motor vehicle where the amount financed is \$5,000.00 or more

may provide for such finance charge as the parties may agree in writing.

(b)(1) Any retail installment contract pertaining to a manufactured home or any consumer loan secured by such a home shall contain the contract provisions required by subsection (c) of Section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221 (12 U.S.C. Section 1735f-7, notes).

(2) Any person violating this subsection shall be subject to the liability specified in Code Section 7-4-5; but the contract or loan shall still be entitled to the benefits of the other provisions of Code Section 7-4-2.

(c) As used in this Code section, the term:

(1) "Finance charge" means the amount agreed upon between the buyer and the seller to be added to the cash sale price and, if a separate charge is made therefor, the amount, if any, included for insurance and other benefits and official fees, in determining the time sale price.

(2) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of Housing and Urban Development and complies with the standards established under The National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

(3) "Retail installment contract" or "contract" means an instrument or instruments creating a purchase money security interest or any instrument evidencing an obligation secured by a purchase money

security interest. (Code 1981, § 7-4-3, enacted by Ga. L. 1983, p. 1146, § 2; Ga. L. 1985, p. 698, § 4; Ga. L. 2004, p. 631, § 7.)

**The 2004 amendment**, effective May 13, 2004, part of an Act to revise, modernize, and correct the Code, inserted "Section" following "U.S.C." in paragraph (b)(1).

**Editor's notes.** — Ga. L. 1983, p. 1146, § 2

repealed the former Code Section 7-4-3, relating to flexible maximum interest rates on real estate loans, and enacted the present Code Section 7-4-3, which became effective March 31, 1983.

## JUDICIAL DECISIONS

**Controlling nature of section as to mobile homes.** — Since the General Assembly, beginning in 1983, has distinguished between mobile home loans and motor vehicle loans, and since O.C.G.A. § 7-4-3(a)(1) and (b)(1), as amended in 1983, deal specifically with mobile home installment sales contracts, whereas O.C.G.A. § 10-1-33(d), as amended in 1985, does not, subsections (a)(1) and (b)(1) express the controlling legislation and legislative intent on mobile home installment sales contracts in excess of \$3,000. *Southern Guar. Corp. v. Doyle*, 256 Ga. 790, 353 S.E.2d 510 (1987).

**Retroactivity.** — The 1983 enactment of O.C.G.A. § 7-4-3(a), which provides that

O.C.G.A. § 10-1-33 shall not apply to retail installment contracts pertaining to any manufactured home with a cash sales price of more than \$3,000.00, does not operate retroactively so as to eliminate any cause of action a manufactured home purchaser may have acquired under O.C.G.A. § 10-1-38 by a transaction prior to the 1983 act's effective date. *Southern Guar. Corp. v. Doyle*, 256 Ga. 790, 353 S.E.2d 510 (1987).

**Cited in** *Gibbs v. Green Tree Acceptance, Inc.*, 188 Ga. App. 633, 373 S.E.2d 637 (1988); *Purser Truck Sales, Inc. v. Patrick*, 201 Ga. App. 119, 410 S.E.2d 335 (1991).

### 7-4-3.1. Maximum interest rate on loans by insured financial institutions.

Repealed by Ga. L. 1983, p. 1146, § 8, effective March 31, 1983.

**Editor's notes.** — The former Code section was based on Code 1933, § 57-101.2, Ga. L. 1980, p. 511, § 1; Ga. L. 1981, p. 784,

§ 1; Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1982, p. 3, § 7.

### 7-4-4. Advertisement of rates of interest or finance charge.

(a) No person shall advertise in or through any newspaper, radio, television, letter, circular, billhead, or in any way or through any medium any rate of interest or finance charge pertaining to any consumer credit transactions other than a rate stated in simple interest terms or a rate stated in terms which would comply with the federal Truth in Lending Simplification and Reform Act, Public Law 96-221 (15 U.S.C. 57(a) and 1602, et seq.).

(b) There is no liability under this Code section on the part of any owner or personnel of any medium in which an advertisement appears or through which it is disseminated when the publisher, owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement, did not prepare the advertisement, or did not have a direct



financial interest in the sale or distribution of the advertised product or service.

(c) Nothing contained in this Code section shall be construed to amend, modify, or repeal any of the provisions of Part 2 of Article 15 of Chapter 1 of Title 10, known as the "Fair Business Practices Act of 1975." (Code 1981, § 7-4-4, enacted by Ga. L. 1983, p. 1146, § 3; Ga. L. 1984, p. 22, § 7.)

**Editor's notes.** — Ga. L. 1983, p. 1146, § 3 repealed former Code Section 7-4-4, relating to maximum interest rates on installment loans and giving security for principal and interest, and enacted present Code Section 7-4-4, which became effective March 31, 1983.

#### RESEARCH REFERENCES

**ALR.** — What constitutes "finance charge" under § 106(a) of the Truth in Lending Act (15 USCA § 1605(a)) or applicable regulations, 154 ALR Fed. 431.

#### **7-4-5. Failure to include federal loan act provisions in retail installment loan; violating advertising restrictions.**

(a) Any person who fails to comply with subsection (b) of Code Section 7-4-3 or Code Section 7-4-4 with respect to any person is liable to such person in an amount equal to the sum of:

(1) Any actual damage sustained by such person as a result of the failure; and

(2) Twice the amount of any interest or finance charge contracted for in connection with the transaction, except that the liability under this paragraph shall not be less than \$100.00 nor greater than \$1,000.00.

(b) Such liability may be asserted in an individual action only and may not be the subject of a class action; provided, however, this provision shall not apply to any class action pending prior to March 31, 1983. (Code 1981, § 7-4-5, enacted by Ga. L. 1983, p. 1146, § 4.)

**Editor's notes.** — Ga. L. 1983, 1146, § 4 repealed former Code Section 7-4-5, relating to maximum interest on loans secured by deposits or savings account, and enacted present Code Section 7-4-5, which became effective March 31, 1983.

#### JUDICIAL DECISIONS

**Cited in** Ford Motor Credit Co. v. London, 175 Ga. App. 33, 332 S.E.2d 345 (1985).

#### **7-4-6. No limit on interest rate payable by profit corporations or persons on nonconsumer loans in excess of \$3,000.00.**

Reserved. Repealed by Ga. L. 1983, p. 1146, § 8, effective March 31, 1983.

**Editor's notes.** — The former Code section was based on Code 1933, § 57-118, enacted by Ga. L. 1961, p. 300, §§ 1, 2; Ga. L. 1979, p. 355, § 2.

#### 7-4-7. No limit on interest rate on loans of \$100,000.00 or more.

Reserved. Repealed by Ga. L. 1983, p. 1146, § 8, effective March 31, 1983.

**Editor's notes.** — The former Code section was based on Code 1933, § 57-119, enacted by Ga. L. 1969, p. 80, §§ 1, 2, 5.

#### 7-4-8. Commission to third person does not make lawful interest usurious.

Except as the application of this Code section is modified by Code Section 7-3-5, where the lender neither takes nor contracts to take more than lawful interest, the loan is not rendered usurious by money paid or agreed to be paid others by the borrower in order to obtain the loan. (Civil Code 1895, § 2887; Civil Code 1910, § 3437; Code 1933, § 57-104; Ga. L. 1957, p. 331, § 3.)

**History of section.** — This section is derived from the decisions in *Merck v. American Freehold Land Mfg. Co.*, 79 Ga. 213, 7 S.E. 265 (1887), and *Hughes v. Griswold*, 82 Ga. 299, 9 S.E. 1092 (1889).

**Law reviews.** — For article discussing methods of computation of finance charges

in Georgia consumer credit contracts, see 30 *Mercer L. Rev.* 281 (1978).

For note discussing the applicability of the usury laws to legitimate brokers' commissions, see 12 *Ga. L. Rev.* 814 (1978).

### JUDICIAL DECISIONS

**Commission to surety is not usurious.** — Premium or commission paid by principal maker of promissory note to endorser or surety to protect latter in risk assumed and to compensate the endorser for the endorser's services in procuring loan for which note is given, in which premium or commission lender has no interest, is in no sense usury. *Jones v. Norton*, 9 Ga. App. 333, 71 S.E. 687 (1910); *Morgan v. Shepherd*, 171 Ga. 33, 154 S.E. 780 (1930).

**Whether one is agent of borrower or of lender is question for jury.** — Question whether agent was agent of borrower or of lender is question of fact which should be decided by jury. *Williams v. Forman*, 18 Ga. App. 242, 89 S.E. 459 (1916), later appeal, 147 Ga. 441, 94 S.E. 552 (1917).

**Cited in** *Eubanks v. Shewmake Bros. Co.*, 30 Ga. App. 315, 117 S.E. 664 (1923); *Vezzani v. Tallant*, 121 Ga. App. 67, 172 S.E.2d 858 (1970).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 45 *Am. Jur. 2d*, Interest and Usury, §§ 192, 193.

**C.J.S.** — 47 *C.J.S.*, Interest and Usury; Consumer Credit, § 162.

**ALR.** — Usury: expenses or charges (including taxes) incident to loan of money, 53 *ALR* 743; 63 *ALR* 823; 105 *ALR* 795.

Usury: expenses or charges in form of

commissions to agents, brokers, or like intermediaries incident to loan of money, 52 *ALR2d* 703.

Payments under (ostensibly) independent contract as usury, 81 *ALR2d* 1280.

Usury: charging borrower for or with expense or trouble of procuring money loaned, 91 *ALR2d* 1389.

### 7-4-9. Back interest may be stipulated in contract and recovered.

Interest from date, if the debt is not punctually paid at maturity, may be recovered when so stipulated in the contract, provided interest has not already been included in the principal amount. (Orig. Code 1863, § 2025; Code 1868, § 2026; Code 1873, § 2052; Code 1882, § 2052; Civil Code 1895, § 2879; Civil Code 1910, § 3429; Code 1933, § 57-105.)

**Law reviews.** — For article on Georgia's usury laws and interest on interest, see 8 Ga. St. U.L. Rev. 291 (1992).

### JUDICIAL DECISIONS

**Interest on past due interest.** — There is no inhibition against charging interest on interest which is past due. *Hardy v. G.A.C. Fin. Corp.*, 131 Ga. App. 282, 205 S.E.2d 526, aff'd, 232 Ga. 632, 208 S.E.2d 453 (1974).

**Interest obligation note is liquidated demand bearing interest upon maturity.** — When obligation to pay interest is put in form of an interest note, that note becomes a liquidated demand; and when it is not paid at maturity it bears interest as such, certainly if parties have contracted that it should.

*Hardy v. G.A.C. Fin. Corp.*, 131 Ga. App. 282, 205 S.E.2d 526, aff'd, 232 Ga. 632, 208 S.E.2d 453 (1974).

**Cited in** *Taylor v. Thomas*, 61 Ga. 472 (1878); *Union Sav. Bank & Trust Co. v. Dottenheim*, 107 Ga. 606, 34 S.E. 217 (1899); *Haire v. Allied Fin. Co.*, 99 Ga. App. 649, 109 S.E.2d 291 (1959); *Fried v. Morris & Eckels Co.*, 118 Ga. App. 595, 164 S.E.2d 732 (1968); *Lewis v. Termplan, Inc.*, 124 Ga. App. 507, 184 S.E.2d 473 (1971).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 45 Am. Jur. 2d, Interest and Usury, §§ 342, 343.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, §§ 77-79.

**ALR.** — Rate of interest after maturity on contracts fixing rate "until payment," 6 ALR 1196.

Right to have usurious payments made on previous obligation applied as payment of principal on renewal, 13 ALR 1244.

Interest on certificate of deposit after maturity, 15 ALR 650.

Right to interest on overdue instalments of interest, in absence of provision therefor, 27 ALR 81.

Right of partners inter se in respect of interest, 66 ALR 3.

Construction of contractual provisions as to interest as regards time from which interest is to be computed, 69 ALR 958.

Payment of or offer to pay principal and

legal interest as condition of relief in equity against usurious contract, 70 ALR 693; 135 ALR 808; 166 ALR 458.

Who other than borrower may avail himself to latter's right to recover back usurious payments or penalties therefor, 82 ALR 1008; 134 ALR 1335.

Income tax in respect of amount collected on a debt which had been deducted as a bad debt in the return for a previous year, 143 ALR 338.

Right of holder of commercial paper to interest or finance charges applicable to period after acceleration of maturity of obligation because of debtor's default, 63 ALR3d 10.

Contingency as to borrower's receipt of money or other property from which loan is to be repaid as rendering loan usurious, 92 ALR3d 623.



### 7-4-10. Usury forfeits entire interest; right of setoff; how forfeiture discharged; when time bars action or defense.

(a) Any person, company, or corporation violating the provisions of Code Section 7-4-2 shall forfeit the entire interest so charged or taken or contracted to be reserved, charged, or taken. No further penalty or forfeiture shall be occasioned, suffered, or allowed.

(b) The amount forfeited as provided in subsection (a) of this Code section may be pleaded as a setoff in any action for the recovery of the principal sum loaned or advanced by the defendant in said action.

(c) No contrivance or arrangement between the parties to any such unlawful transaction or their privies, except an actual and full payment of the amount forfeited as provided in subsection (a) of this Code section, shall have the effect of discharging such forfeiture.

(d) No plea or action for the recovery of such forfeiture shall be barred by lapse of time shorter than one year. (Ga. L. 1875, p. 105, §§ 3, 4; Code 1882, §§ 2057b, 2057c, 2057d, 2057e; Civil Code 1895, §§ 2888, 2889, 2890, 2891; Civil Code 1910, §§ 3438, 3439, 3440, 3441; Ga. L. 1916, p. 48, §§ 1, 2; Code 1933, §§ 57-112, 57-113, 57-114, 57-115.)

**Law reviews.** — For article discussing methods of computation of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978).

For note discussing problems with profits generated by escrow account, and proposing

federal legislative reform, see 10 Ga. St. B.J. 618 (1974). For note discussing penalties for violations of the usury statutes, and procedures for invoking the usury defense, see 12 Ga. L. Rev. 814 (1978).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

#### FORFEITURE

#### SETOFF

#### STATUTE OF LIMITATIONS

### General Consideration

**Actual performance of usurious agreement not required.** — Taint of usury does not result from payment of usurious interest, but from agreement to do so, whether performed or unperformed. *Duderwicz v. Sweetwater Sav. Ass'n*, 595 F.2d 1008 (5th Cir. 1979).

**Once there is usury, the usury infects any renewal note** for the same debt or any part thereof unless the usury is purged. A determination as to the application of former § 7-4-7, which provided for no limit of inter-

est rate on loans of \$100,000.00 or more, cannot be decided without a complete accounting to purge all usurious interest (to be applied to principal, if paid) and then a determination made as to whether or not the principal of the original note was for \$100,000 or more, which would insulate it against the defense of usury. *McNair v. Gold Kist, Inc.*, 166 Ga. App. 782, 305 S.E.2d 478 (1983).

**Unilateral action cannot purge usurious taint.** — Allegedly usurious loan transaction cannot be purged of usurious taint through

**General Consideration (Cont'd)**

unilateral action of lender. *Duderwicz v. Sweetwater Sav. Ass'n*, 595 F.2d 1008 (5th Cir. 1979).

**To purge contract of usury, it must be wholly abandoned or cancelled**, and a new obligation undertaken containing no part of the usury. *Duderwicz v. Sweetwater Sav. Ass'n*, 595 F.2d 1008 (5th Cir. 1979).

**Tender of principal required prior to intervention to prevent foreclosure.** — Since interest only is subject to forfeiture, principal amount of indebtedness must be tendered before equity will intervene to prevent foreclosure sale. *Citizens & S.S. DeKalb Bank v. Watkins*, 236 Ga. 759, 225 S.E.2d 266 (1976).

Before a borrower who has executed a deed infected with usury can have affirmative equitable relief, such as injunction to prevent exercise of power of sale by grantee in such security deed, the borrower must pay or tender to grantee the principal sum due. *McGraw v. Planters' Bank*, 178 Ga. 580, 173 S.E. 643 (1934).

**No forfeiture where claim amended to legal rate.** — Plaintiff did not forfeit any right to interest on an open account for seeking a higher interest rate than that allowed by law where, before trial, plaintiff amended its pleadings to seek the statutorily permitted rate of interest on commercial accounts. *Belvin v. Houston Fertilizer & Grain Co.*, 169 Ga. App. 100, 311 S.E.2d 526 (1983).

**Judgment for principal and attorney's fees does not bear interest.** — Where note is tainted with usury and judgment is obtained for amount advanced and for attorney's fees, as provided for in note, judgment obtained does not bear interest. *Taylor v. Merchants Mut. Credit Corp.*, 100 Ga. App. 634, 112 S.E.2d 188 (1959).

**Waiver of homestead in usurious contract is void.** — Nothing in former Code 1882, § 2057 (see O.C.G.A. § 7-4-10) militated against view that waiver of right of homestead and exemption, made as part of usurious contract, was void. *Cleghorn v. Greeson*, 77 Ga. 343 (1886).

**Federal savings and loan associations subject to usury laws.** — Federal savings and loan association doing business in this state is subject to operation of usury laws and in

making loans must comply with provisions thereof. However, such association may require borrower to pay necessary initial charges in connection with making of loan. *First Fed. Sav. & Loan Ass'n v. Norwood Realty Co.*, 212 Ga. 524, 93 S.E.2d 763 (1956).

**Cited in** *Everett v. Planters' Bank*, 61 Ga. 38 (1878); *Finney v. Brumby*, 64 Ga. 510 (1880); *Gramling, Spalding & Co. v. Pool*, 111 Ga. 93, 36 S.E. 430 (1900); *Weed v. Gainesville, Jefferson & S. R.R.*, 119 Ga. 576, 46 S.E. 885 (1904); *McIntosh v. Thomasville Real Estate & Imp. Co.*, 141 Ga. 105, 80 S.E. 629 (1913); *Strickland v. Bank of Cartersville*, 141 Ga. 565, 81 S.E. 886 (1914); *Lee v. King*, 142 Ga. 609, 83 S.E. 272 (1914); *Kennedy v. Baggarley*, 15 Ga. App. 811, 84 S.E. 211 (1915); *King Bros. & Co. v. Moore*, 147 Ga. 43, 92 S.E. 757 (1917); *Young v. First Nat'l Bank*, 22 Ga. App. 58, 95 S.E. 381 (1918); *Laing v. Hinesville Bank*, 31 Ga. App. 416, 120 S.E. 799 (1923); *Poult v. Cario Banking Co.*, 158 Ga. 338, 123 S.E. 292 (1924); *Mitchell v. Southland Loan & Inv. Co.*, 161 Ga. 215, 130 S.E. 565 (1925); *Bank of Lumpkin v. Farmers State Bank*, 161 Ga. 801, 132 S.E. 221 (1926); *Stewart v. Miller & Co.*, 161 Ga. 919, 132 S.E. 535, 45 A.L.R. 599 (1926); *Flood v. Empire Inv. Co.*, 35 Ga. App. 266, 133 S.E. 60 (1926); *Winder Nat'l Bank v. Graham*, 38 Ga. App. 552, 144 S.E. 357 (1928); *Bennett v. Lowry*, 167 Ga. 347, 145 S.E. 505 (1928); *Griggs v. Clemons*, 44 Ga. App. 522, 162 S.E. 392 (1932); *Cornwall v. Atlanta Trust Co.*, 177 Ga. 303, 170 S.E. 194 (1933); *Folsom v. Continental Adjustment Corp.*, 48 Ga. App. 435, 172 S.E. 833 (1934); *Bennett v. Bennett*, 50 Ga. App. 34, 177 S.E. 90 (1934); *Nash Loan Co. v. Dixon*, 181 Ga. 297, 182 S.E. 23 (1935); *Osborne v. National Realty Mgt. Co.*, 182 Ga. 892, 187 S.E. 56 (1936); *Gore v. Industrial Loan & Sav. Co.*, 52 Ga. App. 401, 183 S.E. 499 (1936); *Ellis v. Williams*, 56 Ga. App. 181, 192 S.E. 491 (1937); *National Bondholders Corp. v. Kelly*, 185 Ga. 788, 196 S.E. 411 (1938); *Lankford v. Holton*, 187 Ga. 94, 200 S.E. 243 (1938); *Peoples Bank v. Mayo*, 61 Ga. App. 877, 8 S.E.2d 405 (1940); *Newcomb v. Niskey's Lake, Inc.*, 63 Ga. App. 811, 12 S.E.2d 160 (1940); *Hartsfield Co. v. Willis*, 192 Ga. 219, 14 S.E.2d 735 (1941), later appeal, 195 Ga. 317, 24 S.E.2d 292 (1943); *Graham v. Lynch*, 206 Ga. 301, 57 S.E.2d 86 (1950); *McConnell*

v. Shropshire, 80 Ga. App. 677, 57 S.E.2d 293 (1950); Pickens Inv. Co. v. Jones, 82 Ga. App. 850, 62 S.E.2d 753 (1950); Gersh v. Peacock, 89 Ga. App. 57, 78 S.E.2d 543 (1953); First Fed. Sav. & Loan Ass'n v. Lindsey, 99 Ga. App. 316, 108 S.E.2d 198 (1959); Plastics Dev. Corp. v. Flexible Prods. Co., 112 Ga. App. 460, 145 S.E.2d 655 (1965); Friend v. Bank of Eastman, 112 Ga. App. 756, 146 S.E.2d 110 (1965); Colter v. Consolidated Credit Corp., 115 Ga. App. 408, 154 S.E.2d 713 (1967); Waters v. Lanier, 116 Ga. App. 471, 157 S.E.2d 796 (1967); Fried v. Morris & Eckels Co., 118 Ga. App. 595, 164 S.E.2d 732 (1968); Hodges v. Community Loan & Inv. Corp., 234 Ga. 427, 216 S.E.2d 274 (1975); Flanders v. Columbia Nitrogen Corp., 135 Ga. App. 21, 217 S.E.2d 363 (1975); Gilbert v. Cherry, 136 Ga. App. 417, 221 S.E.2d 472 (1975); Thomas v. Estes, 139 Ga. App. 738, 229 S.E.2d 538 (1976); Family Home Servs., Inc. v. Taylor, 142 Ga. App. 386, 236 S.E.2d 28 (1977); Henson v. Columbus Bank & Trust Co., 144 Ga. App. 80, 240 S.E.2d 284 (1977); Roberts v. Cameron-Brown Co., 556 F.2d 356 (5th Cir. 1977); Motor Fin. Co. v. Harris, 150 Ga. App. 762, 258 S.E.2d 628 (1979); Peterson v. Newton, 151 Ga. App. 852, 261 S.E.2d 763 (1979); Commercial Credit Plan, Inc. v. Parker, 152 Ga. App. 409, 263 S.E.2d 220 (1979); Kellos v. Parker-Sharpe, Inc., 245 Ga. 130, 263 S.E.2d 138 (1980); Kennedy v. Brand Banking Co., 245 Ga. 496, 266 S.E.2d 154 (1980); Williams v. First Bank & Trust Co., 154 Ga. App. 879, 269 S.E.2d 923 (1980); Adamson v. Trust Co. Bank, 155 Ga. App. 646, 271 S.E.2d 899 (1980); Clark v. Kaiser Agric. Chems., 156 Ga. App. 251, 274 S.E.2d 648 (1980); Thompson v. Hurt, 159 Ga. App. 656, 284 S.E.2d 671 (1981); Dorfman v. Briah Assocs., 160 Ga. App. 359, 287 S.E.2d 75 (1981); Cornelius v. Auto Analyst, Inc., 222 Ga. App. 759, 476 S.E.2d 9 (1996).

### Forfeiture

**Operation of subsections (a) and (d) of this section.** — Under former Code 1933, § 57-112 (see O.C.G.A. § 7-4-10), all interest on a usurious loan was forfeited and payments thereon go in reduction of principal, and any payments made after principal was paid off can be recovered, if paid within 12 months next before filing suit therefor. Hartsfield Co. v. Watkins, 67 Ga. App. 411,

20 S.E.2d 440 (1942); Duderwicz v. Sweetwater Sav. Ass'n, 595 F.2d 1008 (5th Cir. 1979).

**Under former Code 1933, § 57-112 (see O.C.G.A. § 7-4-10), one who lends at usurious rate forfeits interest and other charges for making the loan.** Childs v. Liberty Loan Corp., 144 Ga. App. 715, 242 S.E.2d 354 (1978).

**Forfeiture extends to interest and charges not to principal.** — One who lends at a usurious rate forfeits only interest and other charges for making loan — not principal. Service Loan & Fin. Corp. v. McDaniel, 115 Ga. App. 548, 154 S.E.2d 823 (1967).

A usurious interest rate charged in a note did not void the entire transaction; thus, the interest, but not the principal was forfeited. Aikens v. Wagner, 231 Ga. App. 178, 498 S.E.2d 766 (1998).

**Entire interest forfeited.** — Any person charging more than maximum rate of interest forfeits entire interest. Murdock Acceptance Corp. v. Wagnon, 587 F.2d 764 (5th Cir. 1979).

**Unpaid interest forfeited.** — Interest contracted for but not yet paid is subject to forfeiture. Duderwicz v. Sweetwater Sav. Ass'n, 595 F.2d 1008 (5th Cir. 1979).

**Payments exceeding principal, not barred by statute of limitations.** — Under former Code 1933, § 57-112 (see O.C.G.A. § 7-4-10) all money shown to have been paid in excess of principal amount of loan and not barred by statute of limitations was recoverable. Family Home Servs., Inc. v. Taylor, 142 Ga. App. 386, 236 S.E.2d 28 (1977).

**All interest forfeited where payments are applied to principal.** — All interest is forfeited where loan is usurious, and payments on such loan are applied to principal amount of debt. Hartsfield Co. v. Watkins, 67 Ga. App. 411, 20 S.E.2d 440 (1942).

**Prepaid finance charge is subject to forfeiture if loan is usurious.** — Prepaid finance charge for making a loan which is not paid to a separate legal entity but to lender in its own right is subject to the forfeiture provision of former Code 1933, § 57-112 (see O.C.G.A. § 7-4-10) where loan is usurious. Childs v. Liberty Loan Corp., 144 Ga. App. 715, 242 S.E.2d 354 (1978).

**Forfeiture of interest is only penalty where deed secures usurious debt.** — Deed executed by a borrower purporting to convey



**Forfeiture (Cont'd)**

title to the lender to secure debt infected with usury was not void because so infected with usury. The only penalty to be incurred, under Acts 1916, p. 48, was to forfeit entire interest charged or taken, or contracted to be reserved, charged, or taken. *McGraw v. Planters' Bank*, 178 Ga. 580, 173 S.E. 643 (1934).

**Setoff**

**Usurious interest paid may not be setoff against independent claims** or recovered per se after lapse of one year after its payment. *Feeney Hay Co. v. Suggs*, 60 Ga. App. 42, 2 S.E.2d 806 (1939).

**Statute of Limitations**

**Suit to recover forfeiture** must be brought within one year from payment. *Baker v. Moultrie Banking Co.*, 53 Ga. App. 107, 184 S.E. 894 (1936).

Suits for recovery of forfeiture must be brought within 12 months from payment. *Hartsfield Co. v. Watkins*, 67 Ga. App. 411, 20 S.E.2d 440 (1942).

**Forfeiture referred to in former Code 1933, § 57-115 (see O.C.G.A. § 7-4-10(d)) was that provided for in former Code 1933, § 57-112 (see O.C.G.A. § 7-4-10(a)).** *Duderwicz v. Sweetwater Sav. Ass'n*, 595 F.2d 1008 (5th Cir. 1979).

**Subsection (d) not complete bar.** — Rather than concluding that O.C.G.A. § 7-4-10(d) acts as a complete bar to actions filed more than a year after contract formation, the courts interpreting that section have held that it bars only actions to affirmatively recover interest paid more than a year before the action was instituted. *Doyle v. Southern Guar. Corp.*, 795 F.2d 907 (11th Cir. 1986), cert. denied, 484 U.S. 926, 108 S. Ct. 289, 98 L. Ed. 2d 249 (1987).

**Subsection (d) does not prevent plea claiming credit towards principal.** — Where a lender charges for use of money a greater rate of interest than is permitted by law, the whole charge for interest is forfeited, and all payments made by debtor may be claimed by the debtor as credits upon principal sum loaned; to such claim, no matter when payments were made, statutory bar of one year is not applicable; and this is true even though debtor may have given express direction that payments be applied to interest. *Reconstruction Fin. Corp. v. Puckett*, 181 Ga. 288, 181 S.E. 861 (1935).

**Limitation inapplicable to defensive pleading alleging payment of usurious debt.** — Plea alleging payment of debt infected with usury may be properly filed to an action on debt, notwithstanding more than 12 months have elapsed after payment before plea is filed. *Haskins v. Bank of State*, 100 Ga. 216, 27 S.E. 985 (1897), overruled on other grounds, *Montgomery v. Reynolds*, 124 Ga. 1053, 53 S.E. 576 (1906); *Atlanta Sav. Bank v. Spencer*, 107 Ga. 629, 33 S.E. 878 (1899); *Lankford v. Peterson*, 21 Ga. App. 1, 93 S.E. 499 (1917).

**Timely petition cannot be amended to recover usury barred by limitation.** — Petition to recover usury cannot be amended by adding a count which seeks to recover for other usury paid on a date more than one year before tendering of amendment. *Baker v. Moultrie Banking Co.*, 53 Ga. App. 107, 184 S.E. 894 (1936).

**Statute of limitations in National Banking Act inapplicable to usury defense.** — Statutory limitation of two years in National Banking Act of June 3, 1864, c. 106, 13 Stat. 99, applies only to suit to recover penalty of double interest received or paid, and not to defense of usury to defeat recovery of interest, and begins to run from time of payment of usurious interest. *Young v. First Nat'l Bank*, 22 Ga. App. 58, 95 S.E. 381 (1918).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 45 Am. Jur. 2d, Interest and Usury, §§ 253 et seq., 277, 367 et seq.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, §§ 195, 223, 270, 271.

**ALR.** — Right to have usurious payments made on previous obligation applied as payment of principal on renewal, 13 ALR 1244.

Affirmative liability for usurious penalty or excess interest paid under usurious contract in event of assignment or transfer, 78 ALR 408.

Right to have usurious payments of interest applied as credit on principal as affected by statute of limitations, 101 ALR 741.

Validity or voluntary conveyance consideration for which was tainted by usury, 102 ALR 483.

When does limitation commence to run against action, defense, or counterclaim based on usury, 108 ALR 622.

Right of junior mortgagee to attack senior mortgage for usury, 121 ALR 879.

Usury as affecting conditional sale contract, 152 ALR 598.

Payment or offer to pay principal and interest as condition of relief in equity against usurious contract, 166 ALR 458.

Availability of setoff, counterclaim, or the like to recover either penalty for usury in, or usurious interest paid on, separate transaction or instrument, 54 ALR2d 1344.

Right, in absence of statute expressly so providing, to recover back usurious payments, 59 ALR2d 522.

Validity, and applicability to causes of action not already barred, of a statute enlarging limitation period, 79 ALR2d 1080.

Statute of limitations: effect of delay in appointing administrator or other representative on cause of action accruing at or after death of person in whose favor it would have accrued, 28 ALR3d 1141.

Validity under usury laws of provision calling for repayment of principal which exceeds sum loaned by amount reflecting any decline in purchasing power of dollar, 90 ALR3d 763.

### **7-4-11. Usury is personal defense; no collection from insolvent to prejudice of others.**

Usury is a personal defense; but a creditor may not collect usurious interest from an insolvent debtor to the prejudice of other creditors. (Civil Code 1895, § 2878; Civil Code 1910, § 3428; Code 1933, § 57-103.)

**History of section.** — This section is derived from the decision in *Burgwyn Bros., Tobacco Co. v. Bentley & Co.*, 90 Ga. 508, 16 S.E. 216 (1892).

**Law reviews.** — For note discussing whether a holder in due course takes free of claims of violations of the usury laws, see 12 Ga. L. Rev. 814 (1978).

## **JUDICIAL DECISIONS**

**Defense of usury is personal to debtor,** and may not be urged save by borrower or borrower's privies. *Clark v. Kaiser Agric. Chems.*, 156 Ga. App. 251, 274 S.E.2d 648 (1980);

In accord with *Plowden v. Peoples Fin. Corp.* (In re Pair) See *Plowden v. Peoples Fin. Corp.* (In re Pair), 14 Bankr. 732 (Bankr. N.D. Ga. 1981).

A plea of usury is personal and because the usury laws protect the debtor, not the debt, the parties' various rights concerning the debt belongs to them only so long as they remain within a lender-borrower relationship. *Lindenberg v. First Fed. Sav. & Loan Ass'n*, 528 F. Supp. 440 (N.D. Ga. 1981), *aff'd*, 691 F.2d 974 (11th Cir. 1982).

**Counterclaim or separate suit unnecessary.** — Usury is a defense and need not be asserted as a counterclaim or in separate suit. *Williams v. First Bank & Trust Co.*, 154 Ga. App. 879, 269 S.E.2d 923 (1980).

**Before defense raised, obligation to pay indebtedness prima facie valid.** — Defense of usury is a matter personal to debtor, and, before debtor has made such defense, debtor's obligation to pay indebtedness infected with usury is prima facie valid. *Napier v. Jordan*, 52 Ga. App. 585, 183 S.E. 854 (1936).

**Borrower cannot use usury statute to take advantage of own wrong.** *Eiberger v. West*, 247 Ga. 767, 281 S.E.2d 148 (1981).

**Estoppel can lie to bar defense of usury.** *Eiberger v. West*, 247 Ga. 767, 281 S.E.2d 148 (1981).

Failure to plead usury results in an estoppel to rely upon it as a defense. *Clark v. Kaiser Agric. Chems.*, 156 Ga. App. 251, 274 S.E.2d 648 (1980).

**One failing to set up defense of usury is concluded by judgment.** *Clark v. Kaiser Agric. Chems.*, 156 Ga. App. 251, 274 S.E.2d 648 (1980).

**Failure to raise defense of usury precludes attack levy of execution.** — A debtor who has had the debtor's day in court will not be heard to attack levy of execution on ground that the debt was infected with usury. *Wilkinson v. Holton*, 119 Ga. 557, 46 S.E. 620 (1904); *Clark v. Kaiser Agric. Chems.*, 156 Ga. App. 251, 274 S.E.2d 648 (1980).

**Advertisement of collateral not tortious where defense not raised.** — Fact that after creditor has advertised property for sale for payment of a usurious debt, debtor, in a bill in equity to enjoin sale, sets up usury and shows that the debtor has paid all that the debtor was legally liable for, and obtains a judgment against creditor for an amount which debtor overpaid, does not so relate as to give any tortious character to creditor's original act in advertising property for sale. *Napier v. Jordan*, 52 Ga. App. 585, 183 S.E. 854 (1936).

**Creditor of insolvent may attack claim of another creditor as usurious.** — While plea of usury is a personal one which can be set up by debtor only, where debtor is insolvent and there is a fund in court to be distributed, equity will allow one creditor to suggest usury as to claim of another, and compel usurious creditor to write off usury and receive only principal and legal interest. *Stone v. Georgia Loan & Trust Co.*, 107 Ga. 524, 33 S.E. 861 (1899).

Under former Civil Code 1895, § 2878

(see O.C.G.A. § 7-4-11) petitioning creditors in bankruptcy may attack validity of deed by which alleged bankrupt has conveyed to another creditor a valuable part of the bankrupt's estate on ground that it was usurious, and court of bankruptcy has power to enjoin sale of property by grantee pending adjudication of the question. *In re Miller*, 118 F. 360 (E.D. Ga. 1902).

**Assignee of bond for title can attack conveyance to usurer.** — Assignee of bond for title can attack in equity a conveyance to one who had advanced money to complete purchase for usury. *First Nat'l Bank v. Rambo*, 143 Ga. 665, 85 S.E. 840 (1915).

**Creditor of a party who makes a conveyance tainted with usury is a privy.** *Stone v. Georgia Loan & Trust Co.*, 107 Ga. 524, 33 S.E. 861 (1899).

**Cited in** *Western Union Tel. Co. v. Ryan*, 126 Ga. 191, 55 S.E. 21 (1906); *Broach v. Mullis*, 228 F. 551 (S.D. Ga. 1915); *Peoples Bank v. Fidelity Loan & Trust Co.*, 155 Ga. 619, 117 S.E. 747 (1923); *Newcomb v. Niskey's Lake, Inc.*, 63 Ga. App. 811, 12 S.E.2d 160 (1940); *Clark v. Associate Disct. Corp.*, 92 Ga. App. 583, 89 S.E.2d 208 (1955); *Stein Steel & Supply Co. v. Briggs Mfg. Co.*, 219 Ga. 779, 135 S.E.2d 862 (1962); *Gazaway v. Israel*, 107 Ga. App. 389, 130 S.E.2d 269 (1963); *Rahal v. Titus*, 107 Ga. App. 844, 131 S.E.2d 659 (1963); *Thompson v. Hurt*, 159 Ga. App. 656, 284 S.E.2d 671 (1981).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 45 Am. Jur. 2d, Interest and Usury, § 264.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, § 240.

**ALR.** — Right of junior mortgagee to attack senior mortgage for usury, 59 ALR 342; 121 ALR 879.

Right of surety or guarantor to avail himself of defense of usury, 70 ALR 359.

Survival of claim for usury against estate of usurer, 78 ALR 451.

Who other than borrower may avail himself to latter's right to recover back usurious payments or penalties therefor, '82 ALR 1008; 134 ALR 1335.

Validity, construction, and effect of express agreement releasing cause of action or defense based on exaction of usury, 99 ALR 600.

Estoppel to assert usury against innocent purchaser of usurious instrument, 110 ALR 451.

Statute denying defense of usury to corporation, 63 ALR2d 924.

Right of attachment or judgment creditor, or officer standing in his shoes, to attack older lien or security interest for usury, 70 ALR2d 1409.



### 7-4-12. Interest on judgments.

(a) All judgments in this state shall bear annual interest upon the principal amount recovered at a rate equal to the prime rate as published by the Board of Governors of the Federal Reserve System, as published in statistical release H. 15 or any publication that may supersede it, on the day the judgment is entered plus 3 percent.

(b) If the judgment is rendered on a written contract or obligation providing for interest at a specified rate, the judgment shall bear interest at the rate specified in the contract or obligation.

(c) The postjudgment interest provided for in this Code section shall apply automatically to all judgments in this state and the interest shall be collectable as a part of each judgment whether or not the judgment specifically reflects the entitlement to postjudgment interest.

(d) This Code section shall apply to all civil actions filed on or after July 1, 2003. (Laws 1845, Cobb's 1851 Digest, p. 394; Code 1863, § 2027; Code 1868, § 2028; Code 1873, § 2054; Code 1882, § 2054; Civil Code 1895, § 2882; Civil Code 1910, § 3432; Code 1933, § 57-108; Ga. L. 1980, p. 1118, § 1; Ga. L. 1986, p. 195, § 1; Ga. L. 1987, p. 352, § 1; Ga. L. 1989, p. 14, § 7; Ga. L. 2003, p. 820, § 1.)

**The 2003 amendment**, effective July 1, 2003, designated subsections (a) through (c); substituted "the" for "such" throughout this Code section; in subsection (a), inserted "annual" and substituted "a rate equal to the prime rate as published by the Board of Governors of the Federal Reserve System, as published in statistical release H. 15 or any publication that may supersede it, on the day the judgment is entered plus 3 percent" for "the rate of 12 percent per year" at the end; in subsection (b), substituted "If" for "unless" at the beginning and deleted "in which case" preceding "the judgment" near the middle; substituted "postjudgment interest" for "such interest" at the end of subsection (c); and added subsection (d).

**Cross references.** — Amount of judgment upon which interest may be charged,

§ 9-12-10. Pre-judgment interest in highway condemnation proceedings, § 32-3-19.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1988, the hyphen was deleted in the word "postjudgment" (in subsection (c)).

Pursuant to Code Section 28-9-5, in 2003, "July 1, 2003" was substituted for "the effective date of this Code section" in subsection (d).

**Editor's notes.** — Ga. L. 2003, p. 820, § 9, not codified by the General Assembly, provides that this Act "shall apply to all civil actions filed on or after July 1, 2003."

**Law reviews.** — For article discussing methods of computation of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978).

### JUDICIAL DECISIONS

**Construction with O.C.G.A. § 51-12-14.** — Trial court did not err in adding interest to the award before considering whether the judgment was greater than the demand for purposes of O.C.G.A. § 51-12-14, as

§ 51-12-14 had to be construed in *pari materia* with O.C.G.A. § 7-4-12; post-judgment interest continued to accrue under O.C.G.A. § 7-4-12 until the set-off became effective under O.C.G.A. § 9-13-75.

Sec. Life Ins. Co. v. St. Paul Marine & Fire Ins. Co., 263 Ga. App. 525, 588 S.E.2d 319 (2003).

**Interest on judgments mandatory.** — See *Gunnin v. Parker*, 198 Ga. App. 864, 403 S.E.2d 822, cert. denied, 198 Ga. App. 897, 403 S.E.2d 822 (1991).

**A judgment is a liquidated demand of highest dignity** upon which creditor is entitled to interest. *Executrix of Houston v. Mossman*, 1 Ga. Rpt. Ann. (T.U.P.C. 138) 50 (1807).

**Money judgments bear interest** from their dates of entry both at law and in equity. *Guernsey v. Phinizy*, 113 Ga. 898, 39 S.E. 402, 84 Am. St. R. 270 (1901).

**Interest accrues until paid.** — Under O.C.G.A. § 7-4-12, interest on a judgment continues to accrue at the rate of 12 percent per annum until paid; such post-judgment interest is a damage that the plaintiffs recover against the defendants, and is included in calculating the recovery against it for purposes of O.C.G.A. § 51-12-14, because post-judgment interest at 12 percent is intended to deter post-judgment delay, motions, and appeals and to bring finality to judgments or the defendant pays the price of protracted post-judgment litigation. *Sec. Life Ins. Co. v. St. Paul Marine & Fire Ins. Co.*, 263 Ga. App. 525, 588 S.E.2d 319 (2003).

**Judgment for sum certain required.** — The mandate of O.C.G.A. § 7-4-12 that judgments bear interest “upon the principal amount recovered...” presupposes the rendition of a judgment of a sum certain, thus, in an action seeking declaration of the value of a homeplace equity that was not established at the time of a divorce judgment, the former wife was entitled to interest from the date of the declaratory judgment, not from the date of entry of the divorce judgment. *Brown v. Brown*, 265 Ga. 725, 462 S.E.2d 609 (1995).

**Legal interest rates are prima-facie “equitable”** and any award deviating from the legal rates must be based upon sufficient evidence demonstrating that another rate is appropriate. *Atlantic States Constr., Inc. v. Beavers*, 169 Ga. App. 584, 314 S.E.2d 245 (1984).

**Rate of interest.** — Generally interest on a judgment is to be calculated at 7 percent (now 12 percent) per annum from date of

judgment until payment, but where contract or note upon which action is based specifies a different rate, or where interest is prescribed by statute, judgment thereon bears interest from date of judgment at contract rate or at statutory rate. *Chilivis v. Rogers Oil Co.*, 135 Ga. App. 176, 217 S.E.2d 179 (1975).

The district court did not abuse its discretion in looking to the state statutory interest rate for guidance in determining the appropriate pre-judgment interest rate. *Smith v. American Int’l Life Assurance Co.*, 50 F.3d 956 (11th Cir. 1995).

**Accrual of interest where more than one judgment entered.** — Where a first judgment lacks an evidentiary or legal basis, postjudgment interest accrues from the date of the second judgment; where the original judgment was basically sound but was modified on remand, postjudgment interest accrues from the date of the first judgment. *CRS Serrine, Inc. v. Dravo Corp.*, 219 Ga. App. 301, 464 S.E.2d 897 (1995).

Where the trial court’s finding of liability was confirmed on appeal and the case was simply remanded for clarification of the damage award, and where the second judgment awarded exactly the same amount of damages, postjudgment interest would run from the date of the original judgment. *CRS Serrine, Inc. v. Dravo Corp.*, 219 Ga. App. 301, 464 S.E.2d 897 (1995).

**Deposit into registry of court for less than amount of entire judgment.** — The defendant city’s deposit into the registry of the court did not constitute a valid tender of the entire judgment in a condemnation action, notwithstanding that the deposit was in an amount greater than the judgment rendered for the plaintiff, since the deposit was for the payment of judgments rendered to two plaintiffs and was in an amount less than their combined judgments and, therefore, the plaintiff was entitled to postjudgment interest. *Chouinard v. City of East Point*, 248 Ga. App. 768, 546 S.E.2d 827 (2001).

**Judgment exempted from statutory rate.** — Although the record contained no written contract between the parties, where plaintiff’s complaint alleged that defendants contracted, in addition to paying for plaintiff’s services, to pay plaintiff 1.5 percent per month interest, this contractual provision constituted an obligation under O.C.G.A.

§ 7-4-12, which exempted the judgment from the post-judgment rate of 12 percent. *Sellers v. Nodvin*, 207 Ga. App. 742, 429 S.E.2d 138 (1993).

**Retroactivity of increase.** — The 1980 amendment, which raised the interest on judgments from 7 percent to 12 percent, applied, as of July 1, 1980 (the effective date of the amendment), to judgments rendered before the effective date of the amendment but not satisfied by then. *Shook & Fletcher Insulation Co. v. Central Rigging & Contracting Corp.*, 684 F.2d 1383 (11th Cir. 1982). But see *DOT v. Delta Mach. Prods. Co.*, 162 Ga. App. 252, 291 S.E.2d 104 (1982); *Camelia Corp. v. Cornell*, 162 Ga. App. 362, 291 S.E.2d 556 (1982).

**Application by federal court.** — The federal district court used an interest rate of 12% based on O.C.G.A. § 7-4-12, in computing the total amount of damages in an action for retirement benefits under the federal Employee Retirement Income Security Act, 29 U.S.C. § 1051 et seq. *Williams v. Wright*, 783 F. Supp. 1392 (S.D. Ga. 1992).

**Where forfeiture provision of § 7-4-10(a) applicable, judgment bears no interest.** — Where usurious interest was reserved for a loan of money, and in suit by lender against debtor, judgment was rendered for principal amount only, interest being forfeited by virtue of Acts 1916, p. 48 (see O.C.G.A. § 7-4-10(a)), such judgment bears no interest, as that Act prohibited recovery of any interest where usury was charged. *Tennille Banking Co. v. Quinn*, 156 Ga. 159, 118 S.E. 644 (1923).

**Commercial accounts.** — A commercial account is not, by virtue of O.C.G.A. § 7-4-16, regarding when interest runs on commercial accounts, transformed into such an "obligation" as would come within the exception to the standard post-judgment interest rate of 12 percent per year that is established by O.C.G.A. § 7-4-12. *ADC Constr. Co. v. Hall*, 202 Ga. App. 119, 413 S.E.2d 522 (1991).

**Section applicable in action upon revolving account.** — Although general usury statutes are inapplicable to revolving accounts, they do apply to interest rates chargeable on judgments for actions on such accounts. *Farmers Mut. Exch. of Wrens, Inc. v. Rabun*, 145 Ga. App. 798, 245 S.E.2d 52 (1978).

**Deposits in court not subject to prejudgment and postjudgment interest.** — In a

contract action, a party was not entitled to prejudgment and postjudgment interest where deposits were made pursuant to the requirements of O.C.G.A. § 9-11-67. *Sacha v. Coffee Butler Serv., Inc.*, 215 Ga. App. 280, 450 S.E.2d 704 (1994).

**Judgment in action of trover bears interest from time of entry.** — Judgment in action of trover for gross amount made up of value of mules and their hire bears interest from time of entry. *O'Neil Mfg. Co. v. Woodley*, 118 Ga. 114, 44 S.E. 980 (1903).

**In proceeding to hold party in contempt for failure to make alimony and child-support payments under a divorce decree, the contempt judgment bears interest of 12 percent from the date of its entry.** The court is vested with discretion in determining whether any interest is payable on the child-support arrearages prior to entry of the contempt judgment, which interest should be made part of the contempt judgment itself. *Turner v. Turner*, 251 Ga. 435, 306 S.E.2d 650 (1983); *Leroux v. Avera*, 192 Ga. App. 210, 384 S.E.2d 274 (1989).

**Judgment against surety on supersedeas bond bears interest under this section.** — Judgment in alimony suit against surety upon supersedeas bond given by defendant for eventual condemnation money may, when remittitur from appellate court is received, affirming judgment, be rendered for full amount of all accrued unpaid installments due at time of entering of judgment, which necessarily represents eventual condemnation money. Such a judgment bears interest under former Civil Code 1910, § 3432 (see O.C.G.A. § 7-4-12). *Luke v. Luke*, 32 Ga. App. 738, 124 S.E. 556 (1924).

**Postjudgment interest ran from date of original judgment entered on the jury's verdict, not from the date on which the judgment of the appellate court reversing the grant of the motion for judgment n.o.v. was made the judgment of trial court.** *Wilensky v. Blalock*, 205 Ga. App. 845, 424 S.E.2d 26 (1992).

Where two appeals were taken from an original judgment on a note, and the trial court's judgment in favor of the creditor as to liability on the note was affirmed in both appeals, postjudgment interest ran, not from the date the trial court adopted the appellate judgment, but from the date the original judgment was entered in the trial court.



Groover v. Commercial Bancorp, 220 Ga. App. 13, 467 S.E.2d 355 (1996).

**As to postjudgment interest in condemnation cases, O.C.G.A. § 7-4-12 supersedes O.C.G.A. § 32-3-19, as O.C.G.A. § 7-4-12 is the more recent of the two.** DOT v. Vest, 160 Ga. App. 368, 287 S.E.2d 85 (1981).

**Section does not apply to awards of special masters.** — O.C.G.A. § 7-4-12 applies only to judgments; any interest accruing under O.C.G.A. § 22-2-113 for that period of time following award of special master until jury verdict and entry of final judgment is to be at legal interest rate established by O.C.G.A. § 7-4-2, such rate being 7 percent per annum. City of Atlanta v. Wright, 159 Ga. App. 809, 285 S.E.2d 250 (1981).

**Favorable judgment appellant entitled to interest during pendency of appeal.** — One obtaining money judgment in lower court, who unsuccessfully appeals one's favorable judgment, is entitled to interest on one's judgment during pendency of appeal. Henley v. Mabry, 125 Ga. App. 293, 187 S.E.2d 309 (1972).

Interest on a favorable judgment is not abated by appealing that judgment. Heath v. L.E. Schwartz & Sons, 203 Ga. App. 91, 416 S.E.2d 113 (1992).

**Filing of garnishment proceedings by the judgment creditor during pendency of appeal by the debtor did not toll the accrual of post-judgment interest, even where the garnishee paid the funds into court.** Great S. Midway, Inc. v. Hughes, 223 Ga. App. 643, 478 S.E.2d 400 (1996).

**An administrator acting as mere stakeholder is not liable for interest on judgment rendered against the administrator where the administrator did not make appeal and was at all times ready to make payment.** Truett v. Williams, 101 Ga. 311, 28 S.E. 851 (1897).

**Operation of section in condemnation proceedings under "three assessor" law contained in Title 22.** — Where, in condemnation proceeding under the "three assessor" law as contained in Title 22, amount of final judgment is less than award made by assessors, condemnee is not liable for refund of interest on difference in amount of award and judgment except from date of judgment. City of Atlanta v. Lunsford, 105 Ga. App. 247, 124 S.E.2d 493 (1962).

**Verdict need not provide for future interest.** — As all judgments bear interest from

date of rendition under former Civil Code, § 3432 (see O.C.G.A. § 7-4-12), it is immaterial that verdict does not provide for future interest and judgment, insofar as it provides for future interest, is lawful, and is not invalid upon ground that it does not follow verdict. Lang v. South Ga. Inv. Co., 38 Ga. App. 430, 144 S.E. 149 (1928).

**Judgment for principal and interest due bears interest only upon principal.** — Judgment may be legally entered for principal sum and interest due on claim sued on to date of judgment. However, such judgment only bears interest from its date on principal sum. The interest found to be due at date of judgment does not bear interest. Southern Loan Co. v. McDaniel, 50 Ga. App. 285, 177 S.E. 834 (1934); West v. Jamison, 182 Ga. App. 565, 356 S.E.2d 659 (1987).

**Objection to judgment bearing interest on principal and interest well taken.** — Objection that where verdict included both principal and interest in one gross sum, and that unless corrected the judgment entered thereon would bear interest against defendant upon both principal and interest of the balance of the original debt, was well taken under former Code 1882, § 2054 (see O.C.G.A. § 7-4-12). Hubbard v. McRae, 95 Ga. 705, 22 S.E. 714 (1895); Linder v. Renfroe, 1 Ga. App. 58, 57 S.E. 975 (1907).

**Judgment providing for interest on interest is erroneous.** State Hwy. Dep't v. Godfrey, 118 Ga. App. 560, 164 S.E.2d 340 (1968).

**Where verdict does not separate principal and interest, new trial granted.** — Where verdict in favor of plaintiff manifestly includes both principal and interest, and does not specifically separate amount of each, a new trial will be granted. Bentley v. Phillips, 171 Ga. 866, 156 S.E. 898 (1930).

**Interest on vacated partial summary judgment not awardable.** — Although a partial summary judgment is a judgment for purposes of O.C.G.A. § 7-4-12, where court vacated such a judgment, no post-judgment interest could be awarded on it. Crolley v. Haygood Contracting, Inc., 207 Ga. App. 434, 429 S.E.2d 93 (1993).

**Bankruptcy "cramdown" provisions.** — Motor vehicle finance company was entitled to receive interest from bankruptcy debtor under the Chapter 13 cramdown provisions at the state legal rate of 12%, and not at the installment contract rate of 14%, where

there was no evidence other than the contract of a prevailing rate other than 12%, and where there was no evidence that debtors acted in bad faith in proposing the Chapter 13 plan. *In re Mitchell*, 191 Bankr. 957 (Bankr. M.D. Ga. 1995).

**Cited in** *Sherwood v. Moore*, 35 F. 109 (N.D. Ga. 1888); *Sharpe v. City of Waycross*, 185 Ga. 208, 194 S.E. 522 (1937); *Shedden v. National Florence Crittenton Mission*, 191 Ga. 428, 12 S.E.2d 618 (1940); *Bank of Tupelo v. Collier*, 192 Ga. 409, 15 S.E.2d 499 (1941); *Fried v. Morris & Eckels Co.*, 118 Ga. App. 595, 164 S.E.2d 732 (1968); *State Hwy. Dep't v. Owens*, 120 Ga. App. 647, 171 S.E.2d 770 (1969); *Giant Peanut Co. v. Carolina Chems., Inc.*, 135 Ga. App. 597, 218 S.E.2d 305 (1975); *Laminoirs-Trefileries-Cableries De Lens, S.A. v. Southwire Co.*, 484 F. Supp. 1063 (N.D. Ga. 1980); *FDIC v. Kucera Bldrs.,*

*Inc.*, 503 F. Supp. 967 (N.D. Ga. 1980); *Pettigrew v. Houston's Bldg. Materials & Supply Co.* (In re Guevara), 67 Bankr. 982 (Bankr. N.D. Ga. 1986); *Camellia Corp. v. Cornell*, 157 Ga. App. 625, 278 S.E.2d 168 (1981); *Swish Mfg. S.E., Inc. v. Wilkie*, 158 Ga. App. 275, 279 S.E.2d 724 (1981); *DOT v. Cochran*, 160 Ga. App. 583, 287 S.E.2d 599 (1981); *Upton v. Duck*, 249 Ga. 267, 290 S.E.2d 92 (1982); *Stinson v. Georgia Dep't of Human Resources Credit Union*, 171 Ga. App. 303, 319 S.E.2d 508 (1984); *Bowers v. Price*, 171 Ga. App. 516, 320 S.E.2d 211 (1984); *Stuckey Health Care, Inc. v. State*, 193 Ga. App. 771, 389 S.E.2d 349 (1989); *Nodvin v. West*, 197 Ga. App. 92, 397 S.E.2d 581 (1990); *Hughes v. Great S. Midway, Inc.*, 265 Ga. 94, 454 S.E.2d 130 (1995); *Threatt v. Forsyth County*, 262 Ga. App. 186, 585 S.E.2d 159 (2003).

## OPINIONS OF THE ATTORNEY GENERAL

**Distinction between condemnation cases based on date filed.** — Condemnation cases filed before July 1, 1980, bear interest at 7 percent on amount recovered from date of taking. Cases filed on and after July 1, 1980,

bear interest at 7 percent from date of taking to date of final judgment and at 12 percent from date of final judgment. 1980 Op. Att'y Gen. No. 80-100.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 45 Am. Jur. 2d, Interest and Usury, § 54.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, §§ 23-25.

**ALR.** — Statute of limitation applicable to interest on judgment, 120 ALR 719.

Time when interest ceases to run upon obligation secured by lien transferred to proceeds of sale of the property free from liens in receivership, bankruptcy, or other proceedings, 134 ALR 846.

Date of verdict or date of entry of judgment thereon as beginning of interest period on judgment, 1 ALR2d 479.

Recovery of interest on claim against a governmental unit in absence of provision in contract or express statutory provision, 24 ALR2d 928.

Right to interest on unpaid alimony, 33 ALR2d 1455.

Interest on decree or judgment of Probate Court allowing a claim against estate or making an allowance for services, 54 ALR2d 814.

Interest upon arrearages or unpaid accumulations of annuities, 66 ALR2d 857.

Date from which interest on judgment starts running, as affected by modification of amount of judgment on appeal, 4 ALR3d 1221.

Right to interest, pending appeal, of judgment creditor appealing unsuccessfully on ground of inadequacy, 15 ALR3d 411; 11 ALR4th 1099.

Running of interest on judgment where both parties appeal, 11 ALR4th 1099.

Retrospective application and effect of state statute or rule allowing interest or changing rate of interest on judgments or verdicts, 41 ALR4th 694.

Divorce and separation: award of interest on deferred installment payments of marital asset distribution, 10 ALR5th 191.

Date on which postjudgment interest, under 28 USCS sec. 1961 (a), begins to accrue on federal court's award of attorneys' fees, 111 ALR Fed. 615.

**7-4-12.1. Interest on arrearage on child support.**

All awards of child support expressed in monetary amounts shall accrue interest at the rate of 12 percent per annum commencing 30 days from the day such award or payment is due. This Code section shall apply to all awards, court orders, decrees, and judgments rendered pursuant to Title 19. It shall not be necessary for the party to whom the child support is due to reduce any such award to judgment in order to recover such interest. (Code 1981, § 7-4-12.1, enacted by Ga. L. 1996, p. 649, § 1.)

**JUDICIAL DECISIONS**

**Retroactive application.** — The legislative intent of adopting O.C.G.A. § 7-4-12.1 was to have it apply to all child support arrearages, regardless of whether they accrued prior to July 1, 1996. *Reid v. Reid*, 232 Ga. App. 304, 502 S.E.2d 269 (1998).

**7-4-13. Law of place of contract governs interest unless otherwise provided.**

Every contract shall bear interest according to the law of the place of the contract at the time of the contract, unless upon its face it shall be apparent that the intention of the parties was to adopt the law of another forum; in this case the law of that forum shall govern. (Orig. Code 1863, § 2026; Code 1868, § 2027; Code 1873, § 2053; Code 1882, § 2053; Civil Code 1895, § 2880; Civil Code 1910, § 3430; Code 1933, § 57-106.)

**Law reviews.** — For article on choice-of-law of contracts in Georgia, see 21 Mercer L. Rev. 389 (1970).

**JUDICIAL DECISIONS**

**ANALYSIS**

GENERAL CONSIDERATION  
INTENT OF PARTIES  
EVIDENCE

**General Consideration**

**O.C.G.A. § 7-4-13 has been interpreted as a choice of law provision** which determines which state's usury laws are controlling. *FDIC v. Lattimore Land Corp.*, 656 F.2d 139 (5th Cir. 1981).

**Determination of place of contract.** — See *Folsom v. Continental Adjustment Corp.*, 48 Ga. App. 435, 172 S.E. 833 (1934).

**Law of place of performance governs interest.** — General rule that interest which contract shall bear is to be governed by law of place where it is to be performed applies to contracts legal where made. *Martin v.*

*Johnson*, 84 Ga. 481, 10 S.E. 1092, 8 L.R.A. 170 (1890).

On contracts made in one state to be performed in another, if they bear interest, the law of state where they are to be performed governs rate of interest to be paid. *Vinson v. Platt & McKenzie*, 21 Ga. 135 (1857).

**Dealings with foreign corporation governed by laws of its domicile.** — Dealings in Indiana with corporation chartered by that state are governed by its laws, and when attacked here for usury, provisions of such laws applicable to transaction must be made to appear. *Flournoy & Epping v. First Nat'l*



Bank, 79 Ga. 810, 2 S.E. 547 (1887).

**Place of preliminary negotiations does not determine place of contract.** — Where land was located in Georgia and all papers executed therein, mere fact that negotiations preliminary to execution of papers took place in Florida does not alter fact that this is a Georgia contract. *First Nat'l Bank v. Rambo*, 143 Ga. 665, 85 S.E. 840 (1915).

**Federal law was intended to preempt conflicting state law** in the area of due-on-sale home loan assumption practices of federal savings and loan associations, and federal law permits the escalation of interest rates upon the assumption of a residential purchase loan when there is an appropriate provision in the contract. *Lindenberg v. First Fed. Sav. & Loan*, 691 F.2d 974 (11th Cir. 1982).

**Section applicable where note executed in another state.** — Where note is executed and made payable in another state, even though secured by a deed to land in this state, the rate of interest on it is governed by usury laws of the sister state. *Jones v. Lawman*, 56 Ga. App. 764, 194 S.E. 416 (1937); *Clark v. Transouth Fin. Corp.*, 142 Ga. App. 389, 236 S.E.2d 135 (1977).

**Georgia law applies where contract executed and payable in Georgia.** — Choice of law rule holds that where (1) land held by security deed is in Georgia; (2) contract was executed in Georgia; and (3) contract was made payable in Georgia, law of usury applies as Georgia is place of performance of contract. *FDIC v. Lattimore Land Corp.*, 656 F.2d 139 (5th Cir. 1981).

**Applicability of common law of Georgia.** — Where promissory note is both executed and to be performed in another state, in an attack by maker upon note for usury, in an action brought in this state against the maker by holder, where laws of foreign states regulating interest charges and usury do not appear, the common law will be presumed to be there in force, and right to collect interest in such suit, unless contrary to public policy or specific statutes of this state, will be governed by common law as it has been construed and applied in this state. *Folsom v. Continental Adjustment Corp.*, 48 Ga. App. 435, 172 S.E. 833 (1934).

Where evidence is silent as to legal interest in another state, common law is presumed to govern, and a contract for reasonable inter-

est is allowed. *Thomas v. Clarkson*, 125 Ga. 72, 54 S.E. 77, 6 L.R.A. (n.s.) 658 (1906); *Ellington v. Harris*, 127 Ga. 85, 56 S.E. 134, 119 Ann. Cas. 320 (1906).

**Subsequent agreements governed by laws as of date made.** — The parties are free to bargain away their rights, and once the borrower is released from liability, whether by novation, a loan modification, or any other means, subsequent agreements for repayments of the debt are governed by the laws as of the date they are made, and not the date of the creation of the debt. *Lindenberg v. First Fed. Sav. & Loan Ass'n*, 528 F. Supp. 440 (N.D. Ga. 1981), *aff'd*, 691 F.2d 974 (11th Cir. 1982).

Transactions involving the assumption of home loan obligations, the release of borrowers, and the substitution of new parties at escalated interest rates resulted in new contracts, notwithstanding that the loan modification agreements were not intended to be novations; so the date of the loan assumptions, rather than the original date of notes, controlled the applicable usury rates. *Lindenberg v. First Fed. Sav. & Loan*, 691 F.2d 974 (11th Cir. 1982).

**Facts resulting in finding of Georgia contract.** — See *Taylor v. American Freehold Land-Mortgage Co.*, 106 Ga. 238, 32 S.E. 153 (1898).

**Facts resulting in finding of out-of-state contract.** — See *Goodrich v. Williams*, 50 Ga. 425 (1873).

**Party must plead and prove interest or usury laws of other state.** — Where another state's law applies, provision of law applicable must be made to appear. Since courts of this state will not take cognizance of interest or usury laws of another state it is essential that defendant, if defendant wishes to avail oneself of defense of usury, plead and prove laws of other state in this respect, and that such laws were in force at time of execution of note. *Jones v. Lawman*, 56 Ga. App. 764, 194 S.E. 416 (1937).

**Cited in** *Byrd v. Equitable Life Assurance Soc'y*, 185 Ga. 628, 196 S.E. 63 (1938); *In re Georgia, Fla. & Ala. R.R.*, 88 F. Supp. 796 (M.D. Ga. 1950); *Liberty Loan Corp. v. Crowder*, 116 Ga. App. 280, 157 S.E.2d 52 (1967); *Midland Guardian Co. v. Varnadore*, 148 Ga. App. 742, 252 S.E.2d 685 (1979); *Christiansen v. Beneficial Nat'l Bank*, 972 F. Supp. 681 (S.D. Ga. 1997).

### Intent of Parties

**Georgia law governs where contract so stipulates.** — Where note, executed in this state, is made payable in state of New York, and is secured by a mortgage which stipulates contract and note shall in all respects be construed according to laws of Georgia, and note on its face bears interest at the rate of 8 percent per annum, which is legal in Georgia, the entire amount of such interest is collectible in this state, notwithstanding maximum legal rate of interest in state of New York may be less than 8 percent. *New England Mtg. Sec. Co. v. McLaughlin*, 87 Ga. 1, 13 S.E. 81 (1891).

**Security deeds are relevant in indicating situs contemplated in fixing rate of interest on note.** *Clark v. Transouth Fin. Corp.*, 142 Ga. App. 389, 236 S.E.2d 135 (1977).

**Facts evidencing intent of parties that Georgia law apply.** — See *Underwood v. American Mtg. Co.*, 97 Ga. 238, 24 S.E. 847 (1895).

### Evidence

**No presumption of usury absent proof of other state's usury law.** — Where there is no

proof as to statute of usury of another state, there will be no presumption that contract is usurious. *Rooney v. Southern Bldg. & Loan Ass'n*, 119 Ga. 941, 47 S.E. 345 (1904).

**In ascertaining another state's usury laws, courts are confined to evidence introduced.** — It is not permissible for courts of this state to avail themselves of any means of ascertaining what are laws of another state on subject of usury, other than by evidence introduced. *Champion v. Wilson & Co.*, 64 Ga. 184 (1879); *Craven v. Bates, Kingsbery & Co.*, 96 Ga. 78, 23 S.E. 202 (1895).

**One pleading another state's statute must show that it was in force at contract's execution.** *Thomas v. Clarkson*, 125 Ga. 72, 54 S.E. 77, 6 L.R.A. (n.s.) 658 (1906).

**Evidence necessary for finding that foreign contract is usurious.** — For jury to find that contract made and to be performed in another state was void for usury, evidence must show that rate of interest agreed to be taken was in excess of rate allowed by law of such state. *Mayor of Griffin v. Inman, Swann & Co.*, 57 Ga. 370 (1876).

**Insufficient showing as to other state's usury laws.** — See *Craven v. Bates, Kingsbery & Co.*, 96 Ga. 78, 23 S.E. 202 (1895).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 45 Am. Jur. 2d, Interest and Usury, §§ 13, 17, 18.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, § 35.

**ALR.** — Time at which interest is payable under will or contract providing for payment of interest, 10 ALR 997.

Validity of agreement to pay interest on interest, 37 ALR 325; 76 ALR 1484.

Right of holder of preferred claim to interest after appointment of receiver or

declared bankruptcy or insolvency, where assets are insufficient to pay principal of all claims, 69 ALR 1210.

Law of the forum as governing the right to and rate of interest as damages for delay in payment of money or discharge of other obligations, 78 ALR 1047.

Who other than borrower may avail himself to latter's right to recover back usurious payments or penalties therefor, 82 ALR 1008; 134 ALR 1335.

### 7-4-14. Interest runs from default unless otherwise agreed; when demand necessary.

In the absence of an agreement to the contrary, interest shall not run until default; hence, where money can be recovered because of mistake or other like reasons, no interest shall run until after demand and refusal to refund. (Civil Code 1895, § 2881; Civil Code 1910, § 3431; Code 1933, § 57-107.)

**History of section.** — This section is derived from the decision in Georgia R.R. &

Banking Co. v. Smith, 83 Ga. 626, 10 S.E. 235 (1889).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

##### MISTAKE

#### OBLIGATIONS PAYABLE ON DEMAND

##### General Consideration

**Interest accrues after default on interest-free contract.** — Stipulation in contract for sale of goods, to be delivered within reasonable time in future and to be paid for on delivery, to effect that obligation of purchaser is to bear no interest, does not mean that purchaser would not be required to pay interest in case of and after the purchaser's default, but was merely a provision against payment of interest prior to maturity of purchase-money. *Morgan v. Colt Co.*, 34 Ga. App. 630, 130 S.E. 600 (1925).

**Interest note is liquidated demand which bears interest at maturity.** — When obligation to pay interest is put in form of interest note, that note becomes a liquidated demand; and when it is not paid at maturity it bears interest as such, certainly if parties have contracted that it should. *Walton v. Johnson*, 213 Ga. 108, 97 S.E.2d 310 (1957).

**Good faith diversion of funds insufficient to bring case within section.** — That diversion of funds was made in good faith and with honest intentions is not sufficient to bring a case within former Civil Code 1895, § 2881 (see O.C.G.A. § 7-4-14). *Davidson v. Story*, 106 Ga. 799, 32 S.E. 867 (1899).

**Trustee is chargeable with legal rate of interest from date of breach of trust.** *Allen v. Allen*, 198 Ga. 269, 31 S.E.2d 483 (1944).

**Interest charged from time of appropriation for improper retention of fees.** — Where executor improperly retained attorney's fees for services rendered by the executor it is proper to charge the executor with interest from time such fees were appropriated. *Davidson v. Story*, 106 Ga. 799, 32 S.E. 867 (1899).

**Interest recoverable from time of discharge upon payment of spouse's debt.** — Where wife did not demand repayment of money with which she discharged her husband's debt until sometime subsequent to its

payment, she could recover interest thereon from time of its payment. *Bank of Waynesboro v. Walters*, 135 Ga. 643, 70 S.E. 244 (1911).

**Interest recoverable from date of contract made by incompetent party.** — Where one not having capacity to contract is induced by undue influence to pay over money under contract, interest may be recovered from date of contract if recovery allowed at all. *Newman v. Thompson*, 134 Ga. 137, 67 S.E. 662 (1910).

**Cited in** *Cochran v. City of Thomasville*, 167 Ga. 579, 146 S.E. 462 (1928); *Mendenhall v. Nalley*, 81 Ga. App. 517, 59 S.E.2d 283 (1950); *Carroll v. Taylor*, 87 Ga. App. 815, 75 S.E.2d 346 (1953); *Jenkins v. Tastee-Freez of Ga., Inc.*, 114 Ga. App. 849, 152 S.E.2d 909 (1966); *Northside Envtl. Servs., Inc. v. National Bank*, 191 Ga. App. 348, 381 S.E.2d 536 (1989).

##### Mistake

**Where payment is by mistake, interest does not run until after demand.** — Where money is paid by mistake, and there is no fraud or misconduct by party receiving it, interest does not run until after demand, since prior to demand, by suit or otherwise, receiver is in no default. *Trustees of Jesse Parker Williams Hosp. v. Nisbet*, 191 Ga. 821, 14 S.E.2d 64 (1941).

The general rule is that on money paid by mistake, where there is no fraud or misconduct by party receiving it, interest does not run until after demand. *Dell v. Kugel*, 99 Ga. App. 551, 109 S.E.2d 532 (1959).

In an action for money had and received brought to recover money paid and received by reason of mutual mistake of law, interest accrues not from time money is received, but from date on which demand for its return is made. *Dell v. Kugel*, 99 Ga. App. 551, 109 S.E.2d 532 (1959).



**Mistake (Cont'd)**

**Former Code 1933, § 57-107 (see O.C.G.A. § 7-4-14) is not limited to a mistake of fact;** there can be a mistake as to the law in good faith. *Keen v. Lewis*, 215 Ga. 166, 109 S.E.2d 764 (1959).

**Section applicable only where money recoverable.** — Former Code 1933, § 57-107 (see O.C.G.A. § 7-4-14) applicable only where money, paid by mistake or other like reason, can be recovered, and has no reference to situations where a trustee has converted property of another to the trustee's own use. *Allen v. Allen*, 198 Ga. 269, 31 S.E.2d 483 (1944).

**Obligations Payable On Demand**

**Where salary is demanded and refused, judgment may bear interest.** — There is a definite contractual relation between every employee and employer, whether employee is a public officer or not, which entitles employee to payment of the employee's salary, and where demand is made therefor and refused, court may award interest on salary. *Undercofler v. Scott*, 220 Ga. 406, 139 S.E.2d 299 (1964).

**Interest on claim due on notice and demand runs from demand.** — Where claim is due only on notice and demand upon donee, interest on such claim runs only from demand. *Trustees of Jesse Parker Williams Hosp. v. Nisbet*, 191 Ga. 821, 14 S.E.2d 64 (1941).

**Legacy payable at discretion does not bear interest until after demand.** — Where legacy is placed in hands of person with discretion as to payment, it does not bear interest until after date of demand for payment. *Harrison v. Watkins*, 127 Ga. 314, 56 S.E. 437 (1907).

**Deposit for certiorari does not bear interest until after demand.** — Where it is necessary for allowance of certiorari that deposit of fine and costs for violation of a city ordinance be made, deposit does not bear interest until after demand. *Mayor of Savannah v. Kassell*, 115 Ga. 310, 41 S.E. 572 (1902).

**Where guarantor agreed to pay certain sum, interest does not run until demand has been made upon the guarantor.** *Manry v. Waxelbaum Co.*, 108 Ga. 14, 33 S.E. 701 (1899).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 45 Am. Jur. 2d, Interest and Usury, §§ 65, 67.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, § 47.

**ALR.** — Time at which interest is payable under will or contract providing for payment of interest, 10 ALR 997.

When contract construed to require interest to be paid in advance, 39 ALR 951.

Who other than borrower may avail himself to latter's right to recover back usurious payments or penalties therefor, 82 ALR 1008; 134 ALR 1335.

Liability of Federal Deposit Insurance Corporation for interest in respect of insured deposit, 153 ALR 532.

**7-4-15. When interest runs on liquidated demands; promissory notes payable on demand.**

All liquidated demands, where by agreement or otherwise the sum to be paid is fixed or certain, bear interest from the time the party shall become liable and bound to pay them; if payable on demand, they shall bear interest from the time of the demand. In case of promissory notes payable on demand, the law presumes a demand instantly and gives interest from date. (Laws 1799, Cobb's 1851 Digest, p. 405; Ga. L. 1858, p. 90, § 1; Code 1863, § 2029; Code 1868, § 2030; Code 1873, § 2056; Code 1882, § 2056; Civil Code 1895, § 2884; Civil Code 1910, § 3434; Code 1933, § 57-110.)

**Law reviews.** — For note discussing usury law application to interest charged on liquidated demands and promissory notes payable on demand, see 12 Ga. L. Rev. 814 (1978).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

#### LIQUIDATED DEMANDS

#### ACCOUNTS

#### INSURANCE

#### WHEN INTEREST IS RECOVERABLE

#### EFFECT OF TENDER

### General Consideration

**Prejudgment interest.** — An award of interest under O.C.G.A. § 7-4-15 is not premised on bad faith but on the principle that when a debt is owed and the demands for funds is made, interest accrues from the time entitlement attaches. *Rivergate Corp. v. Atlanta Indoor Adv. Concepts, Inc.*, 210 Ga. App. 501, 436 S.E.2d 697 (1993).

An award of prejudgment interest is made by the judge as a matter of law under O.C.G.A. § 7-4-15. *American Family Life Assurance Co. v. United States Fire Co.*, 885 F.2d 826 (11th Cir. 1989).

Prejudgment interest is required where damages are liquidated. *United States ex rel. Delta Metals, Inc. v. R.M. Wells Co.*, 497 F. Supp. 541 (S.D. Ga. 1980); *United States ex rel. Ga. Elec. Supply Co. v. United States Fid. & Guar. Co.*, 656 F.2d 993 (5th Cir. 1981).

Because the trial court in an action involving a tax lien encumbrance erred in calculating prejudgment interest pursuant to O.C.G.A. § 7-4-16, which applies to commercial accounts, remand for re-calculation based on O.C.G.A. § 7-4-15 was required. *Homeland Communities, Inc. v. Rahall & Fryer*, 235 Ga. App. 440, 509 S.E.2d 714 (1998).

**Attorney fees and expenses.** — An award of attorney fees and litigation expenses is not liquidated until reduced to judgment and cannot support an award of prejudgment interest under O.C.G.A. § 7-4-15. *Harkleroad v. Stringer*, 231 Ga. App. 464, 499 S.E.2d 379 (1998).

**Interest is allowed on liquidated accounts, and should be payable from due date.** *Walter E. Heller & Co. v. Aetna Bus. Credit, Inc.*, 158 Ga. App. 249, 280 S.E.2d 144 (1981).

### Recovery where amount fixed and certain.

— Where the amount at issue is fixed and certain, the recovery of prejudgment interest is appropriate. *Buchanan v. Bowman*, 820 F.2d 359 (11th Cir. 1987).

Prejudgment interest is allowed where amount in question is liquidated, or is certain and fixed. *Erickson's Inc. v. Travelers Indem. Co.*, 330 F. Supp. 380 (S.D. Ga. 1971), *aff'd*, 454 F.2d 884 (5th Cir.), *cert. denied*, 409 U.S. 847, 93 S. Ct. 51, 34 L. Ed. 2d 87 (1972).

**Amount certain cannot be rendered uncertain** by means of unsuccessful, invalid, or lack of defense. *Bassett Furn. Indus. v. NVF Co.*, 576 F.2d 1084 (5th Cir. 1978).

**Total amount due and owing is ascertained when bill is tendered**, and a defendant owes interest thereon, subject to reduction if defendant can establish that retention of part of amount after due date is justifiable. *Bassett Furn. Indus. v. NVF Co.*, 576 F.2d 1084 (5th Cir. 1978).

**Entitlement to legal rate from maturity absent contract provision for interest.** — Even though there may have been no liability for interest under express provisions of contract, plaintiff is nevertheless entitled to interest at legal rate on any matured portion of indebtedness from date it matured. *Considine Co. v. Turner Communications Corp.*, 155 Ga. App. 911, 273 S.E.2d 652 (1980).

**Wrongfully collected taxes.** — A taxpayer is allowed to recover prejudgment interest in an action for a refund of wrongfully collected taxes. *Eastern Air Lines v. Fulton County*, 183 Ga. App. 891, 360 S.E.2d 425, *cert. denied*, 183 Ga. App. 906, 360 S.E.2d 425 (1987).

**Payment date based on nonoccurring contingency due within reasonable time.** —

**General Consideration (Cont'd)**

When existence of debt is conditional on happening of some event, payment cannot be enforced until that event happens; but when payment of existing liability is postponed until happening of event which does not happen, payment must be made within a reasonable time. *B.G. Sanders & Assocs. v. Castellow*, 154 Ga. App. 433, 268 S.E.2d 695 (1980).

**Jury rendering verdict for liquidated demand should give interest thereon.** *Earnest v. Nappier*, 19 Ga. 537 (1856); *Felker v. Johnson*, 53 Ga. App. 390, 186 S.E. 144 (1936).

**Jury must determine interest due from time liability arose.** — Where jury found that plaintiff was entitled to recover, it was also required to find amount of interest due from time defendant became liable. *Brandt v. Eckman*, 79 Ga. App. 47, 52 S.E.2d 665 (1949).

**Payment of county orders.** — Former Code 1933, §§ 23-1604 — 23-1608 (see O.C.G.A. §§ 36-11-3 through 36-11-6) did not expressly or impliedly repeal former Code 1933, §§ 57-101, 57-110 and § 14-207 (see O.C.G.A. §§ 7-4-2, 7-4-15 and 11-3-108, respectively). They all are to be considered together, and when so considered, the sections first mentioned contemplate administrative action by county officers in regard to order in which lawful county orders shall be paid. *Marion County v. First Nat'l Bank*, 193 Ga. 263, 18 S.E.2d 475 (1942).

**Section 36-11-5 does not mean interest is disallowed where sufficient funds are available.** — Provision in former Code 1933, § 23-1608 (see O.C.G.A. § 36-11-5) that county orders when legally issued and duly presented but not paid for want of funds, shall bear interest if endorsed by treasurer as set forth, does not mean that interest allowed generally on liquidated demands under former Code 1933, §§ 57-101 and 57-110 (see O.C.G.A. §§ 7-4-2 and 7-4-15) will be disallowed if sufficient available funds are in hand to pay warrant. *Marion County v. First Nat'l Bank*, 193 Ga. 263, 18 S.E.2d 475 (1942).

**Section inapplicable in suits based on quantum meruit.** — Where plaintiff seeks recovery on quantum meruit basis and not for a liquidated demand, former Code 1933,

§ 57-110 (see O.C.G.A. § 7-4-15 and former Code 1933, § 57-111 (see O.C.G.A. § 7-4-16)) are not applicable. *Noble v. Hunt*, 95 Ga. App. 804, 99 S.E.2d 345 (1957).

**Cited in** *Howard v. Chamberlain, Boynton & Co.*, 64 Ga. 684 (1880); *Merck v. American Freehold Land Mtg. Co.*, 79 Ga. 213, 7 S.E. 265 (1887); *Union Sav. Bank & Trust Co. v. Dottenheim*, 107 Ga. 606, 34 S.E. 217 (1899); *Central of Ga. Ry. v. Central Trust Co.*, 135 Ga. 472, 69 S.E. 708 (1910); *Hobbs v. Citizens Bank*, 32 Ga. App. 522, 124 S.E. 72 (1924); *Waynesboro Planing Mill v. Barrow*, 33 Ga. App. 26, 125 S.E. 505 (1924); *Stover v. Atlantic Ice & Coal Corp.*, 159 Ga. 357, 125 S.E. 837 (1924); *United States Fid. & Guar. Co. v. Koehler*, 36 Ga. App. 396, 137 S.E. 85 (1927); *New York Life Ins. Co. v. Gilmore*, 40 Ga. 431, 149 S.E. 799 (1929); *Donalsonville Chevrolet Co. v. Dickenson*, 41 Ga. App. 392, 153 S.E. 106 (1930); *Southern Cotton Oil Co. v. Raines*, 171 Ga. 154, 155 S.E. 484 (1930); *Barrow County Cotton Mills v. Sams*, 48 Ga. App. 357, 172 S.E. 820 (1934); *Williams Realty & Loan Co. v. Simmons*, 188 Ga. 184, 3 S.E.2d 580 (1939); *Brown v. Parks*, 190 Ga. 540, 9 S.E.2d 897 (1940); *Trustees of Jesse Parker Williams Hosp. v. Nisbet*, 191 Ga. 821, 14 S.E.2d 64 (1941); *Lively v. Munday*, 201 Ga. 409, 40 S.E.2d 62 (1946); *Haygood v. Smith*, 80 Ga. App. 461, 56 S.E.2d 310 (1949); *Browne v. Makin*, 177 F.2d 753 (5th Cir. 1949); *Carroll v. Taylor*, 87 Ga. App. 815, 75 S.E.2d 346 (1953); *Jacksonville Blow Pipe Co. v. Trammell Hardwood Flooring Co.*, 170 F. Supp. 537 (N.D. Ga. 1958); *Swanson v. Chase*, 107 Ga. App. 295, 129 S.E.2d 873 (1963); *First Nat'l Bank v. State Hwy. Dep't*, 219 Ga. 144, 132 S.E.2d 263 (1963); *Housing Auth. v. New*, 220 Ga. 1, 136 S.E.2d 732 (1964); *Smith v. Maples*, 114 Ga. App. 529, 151 S.E.2d 815 (1966); *State Hwy. Dep't v. Knox-Rivers Constr. Co.*, 117 Ga. App. 453, 160 S.E.2d 641 (1968); *Fried v. Morris & Eckels Co.*, 118 Ga. App. 595, 164 S.E.2d 732 (1968); *Turpin v. North Am. Acceptance Corp.*, 119 Ga. App. 212, 166 S.E.2d 588 (1969); *Eastern Fed. Corp. v. Avco-Embassy Pictures Corp.*, 331 F. Supp. 1253 (N.D. Ga. 1971); *Shure v. Willner & Millkey*, 126 Ga. App. 368, 190 S.E.2d 620 (1972); *Hardy v. G.A.C. Fin. Corp.*, 131 Ga. App. 282, 205 S.E.2d 526 (1974); *Davis v. Griffin-Spalding County Bd. of Educ.*, 445 F. Supp. 1048 (N.D. Ga. 1975); *Midtown Prop-*



erties, Inc. v. George F. Richardson, Inc., 139 Ga. App. 182, 228 S.E.2d 303 (1976); Citizens & S. Nat'l Bank v. Weyerhaeuser Co., 152 Ga. App. 176, 262 S.E.2d 485 (1979); Norair Eng'r Corp. v. Erickson's, Inc., 152 Ga. App. 489, 263 S.E.2d 165 (1979); Bennett v. McGinty, 160 Ga. App. 640, 287 S.E.2d 644 (1981); Barge & Co. v. City of Atlanta, 161 Ga. App. 675, 288 S.E.2d 98 (1982); Stenger Indus., Inc. v. Eaton Corp., 165 Ga. App. 77, 298 S.E.2d 628 (1983); International Indem. Co. v. Collins, 258 Ga. 236, 367 S.E.2d 786 (1988); Vulcan Life Ins. Co. v. Davenport, 191 Ga. App. 79, 380 S.E.2d 751 (1989); Northside Envtl. Servs., Inc. v. National Bank, 191 Ga. App. 348, 381 S.E.2d 536 (1989); Dalcour Mgt., Inc. v. Sewer Rooter, Inc., 205 Ga. App. 681, 423 S.E.2d 419 (1992); Adler v. Hertling, 215 Ga. App. 769, 451 S.E.2d 91 (1994); Equicor, Inc. v. Stamey, 216 Ga. App. 375, 454 S.E.2d 550 (1995); T & R Custom, Inc. v. Liberty Mut. Ins. Co., 227 Ga. App. 144, 488 S.E.2d 705 (1997); Kent v. Brown, 238 Ga. App. 607, 518 S.E.2d 737 (1999); Associated Mechanical Corp. v. Martin K. Eby Constr. Co., 67 F. Supp. 2d 1375 (M.D. Ga. 1999); Colonial Bank v. Boulder Bankcard Processing, Inc., 254 Ga. App. 686, 563 S.E.2d 492 (2002).

### Liquidated Demands

**Definition of liquidated debt.** — A liquidated claim is for an amount certain and fixed. *International Indem. Co. v. Terrell*, 178 Ga. App. 570, 344 S.E.2d 239 (1986); *American Family Life Assurance Co. v. United States Fire Co.*, 885 F.2d 826 (11th Cir. 1989); *Tower Fin. Servs., Inc. v. Smith*, 204 Ga. App. 910, 423 S.E.2d 257, cert. denied, 204 Ga. App. 922, 423 S.E.2d 257 (1992).

Liquidation is an amount certain and fixed, either by act and agreement of parties, or by operation of law; a sum which cannot be changed by proof; it is so much or nothing; and the term does not necessarily refer to a writing. *Nisbet v. Lawson*, 1 Ga. 275 (1846); *Council v. Hixon*, 11 Ga. App. 818, 76 S.E. 603 (1912).

A liquidated demand is an amount certain and fixed . . . a sum which cannot be changed by proof. *GECC v. Strickle Properties*, 861 F.2d 1532 (11th Cir. 1988).

A liquidated sum is an amount certain and fixed, either by the act and agreement of the

parties or by operation of law; a sum which cannot be changed by the proof; it is so much or nothing. *Great Am. Ins. Co. v. International Ins. Co.*, 753 F. Supp. 357 (M.D. Ga. 1990).

Liquidated damages were damages that were in an amount that were certain and fixed, and since the trial court did not have before it such evidence, it erred in determining that the damages in the contract between the services provider and the corporation were liquidated, and entering a corresponding judgment. *Mitchell v. GilWil Group, Inc.*, 261 Ga. App. 882, 583 S.E.2d 911 (2003).

**Debt is liquidated when it is certain how much is due and when it is due.** *Roberts v. Prior*, 20 Ga. 561 (1856); *Lincoln Lumber Co. v. Keeter*, 167 Ga. 231, 145 S.E. 68 (1928); *Continental Carriers, Inc. v. Seaboard Coast Line R.R.*, 129 Ga. App. 889, 201 S.E.2d 826 (1973); *B.G. Sanders & Assocs. v. Castellow*, 154 Ga. App. 433, 268 S.E.2d 695 (1980).

**When certainty must occur.** — Certainty as to amount due and when it is due need not be contemporaneous with agreement out of which it results. *Bartee v. Andrews*, 18 Ga. 407 (1855); *Council v. Hixon*, 11 Ga. App. 818, 76 S.E. 603 (1912).

**Demand for "\$30,500.00 approx"** did not demand liquidated damages in a fixed or certain amount. *Rice v. State Farm Fire & Cas. Co.*, 208 Ga. App. 166, 430 S.E.2d 75 (1993).

**Liquidation of claim may be achieved by agreement of parties** among other methods. *Lumbermens Mut. Ins. Co. v. Cantex Mfg. Co.*, 262 F.2d 63 (5th Cir. 1958).

The trial court properly found that the liquidated damages provision of a contract was enforceable, where plaintiff's damages would be difficult to assess with accuracy, the parties' intent was to provide for damages rather than a penalty, and the amount specified was a reasonable pre-estimation of the plaintiff's probable loss. *Maz Medics, Inc. v. Satellite Adv. Sys.*, 194 Ga. App. 583, 391 S.E.2d 446 (1990).

**Claim which one party to transaction cannot alone render certain is unliquidated.** *Roberts v. Prior*, 20 Ga. 561 (1856); *Council v. Hixon*, 11 Ga. App. 818, 76 S.E. 603 (1912); *Lincoln Lumber Co. v. Keeter*, 167 Ga. 231, 145 S.E. 68 (1928); *Buck Creek*

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*Indus., Inc. v. Crutchfield & Co.*, 133 Ga. App. 80, 210 S.E.2d 32 (1974).

**Claim unliquidated when there is a bona fide contention as to amount owing.** *Ryan v. Progressive Retailer Publishing Co.*, 16 Ga. App. 83, 84 S.E. 834 (1915); *International Indem. Co. v. Terrell*, 178 Ga. App. 570, 344 S.E.2d 239 (1986).

**Where there remains question of fact as to amount of money defendant owes plaintiff**, the damages are no longer liquidated, and an award of prejudgment interest would not be authorized. *Spears v. Allied Eng'g Assocs.*, 186 Ga. App. 878, 368 S.E.2d 818 (1988).

**Claim unliquidated where entire amount in dispute.** — In a suit to collect an alleged contractual indebtedness arising from the dissolution of a partnership agreement, under which each partner would receive that partner's share of the assets of the partnership, including accounts receivable to the extent that "charges made exceeded collections credited to such charges during the 180-day period immediately preceding the date of dissolution," since the entire principal amount of the indebtedness was in dispute, it necessarily followed that no portion of the claim was liquidated and that the plaintiff was not entitled to pre-judgment interest. *Arora v. Thakrar*, 187 Ga. App. 170, 369 S.E.2d 524 (1988).

**Dispute as to amount of surplus from real estate foreclosure sale.** — Where the amount of the surplus (if any) from a foreclosure sale on real estate was in dispute throughout the course of litigation (that is, it was the subject of conflicting testimony, which might be resolved only by a final court decision), this surplus figure clearly did not fall within the concept of "liquidation" under Georgia law. *Walton Motor Sales, Inc. v. Ross*, 736 F.2d 1449 (11th Cir. 1984).

**Demand unliquidated where amount established by jury.** — Award of prejudgment interest was error where demand for damages was not liquidated because its amount could only be established by submission to a jury. *Marathon Oil Co. v. Hollis*, 167 Ga. App. 48, 305 S.E.2d 864 (1983); *Malta Constr. Co. v. Henningson, Durham & Richardson, Inc.*, 716 F. Supp. 1466 (N.D. Ga. 1989), *aff'd*, 927 F.2d 614 (11th Cir. 1991); *Jennings Enters., Inc. v. Carte*, 224

Ga. App. 538, 481 S.E.2d 541 (1997).

**Where defendant is indebted to plaintiff for definite sum**, interest is properly allowed thereon. *Thompson v. Ocmulgee Bldg. & Loan Ass'n*, 56 Ga. 350 (1876).

**Claim resting entirely in parol may be a liquidated demand.** *Nisbet v. Lawson*, 1 Ga. 275 (1846); *Anderson v. State*, 2 Ga. 370 (1847); *Council v. Hixon*, 11 Ga. App. 818, 76 S.E. 603 (1912).

**Unliquidated demands arising ex delicto do not bear interest as a matter of law.** *Western & Atl. R.R. v. Brown*, 102 Ga. 13, 29 S.E. 130 (1897).

**Interest.** If interest is allowed, it is really not interest but damages and the verdict should not express damages in aggregate sum. *Georgia R.R. & Banking Co. v. Crawley*, 87 Ga. 191, 13 S.E. 508 (1891).

In actions ex delicto, the jury may allow interest as part of damages. If interest is allowed it is not recoverable eo nomine and the verdict should express damages in the aggregate sum. *Mayor of Milledgeville v. Stembridge*, 139 Ga. 692, 78 S.E. 35 (1913).

**Purchase price is liquidated demand bearing interest after delivery.** — Claim for purchase price, where contract of sale has been fixed at definite sum, is a liquidated demand; and, in absence of proof of either contract or custom concerning payment, such purchase price is due when material is delivered and amount bears interest at legal rate from date of delivery. *McCarthy v. Nixon Grocery Co.*, 126 Ga. 762, 56 S.E. 72 (1906); *Howard Supply Co. v. Bunn*, 127 Ga. 663, 56 S.E. 757 (1907); *Curtis v. College Park Lumber Co.*, 145 Ga. 601, 89 S.E. 680 (1916); *Rice-Stix Dry Goods Co. v. Friedlander Bros.*, 30 Ga. App. 312, 117 S.E. 762 (1923), *aff'd*, 158 Ga. 303, 122 S.E. 890 (1924); *Horkan v. Great Am. Indem. Co.*, 211 Ga. 690, 88 S.E.2d 13 (1955); *National Recording Corp. v. W.R. Grace & Co.*, 112 Ga. App. 310, 145 S.E.2d 382 (1965).

Where purchaser breached contract by failure to pay purchase-money on delivery of goods, seller was entitled to recover agreed purchase-price as liquidated damages, with interest thereon from time purchaser was liable and bound to pay. *Morgan v. Colt Co.*, 34 Ga. App. 630, 130 S.E. 600 (1925).

**Interest, due and payable, is a liquidated demand.** — Where interest was due and payable on installments of certain paving



assessments, such accrued and matured interest was a liquidated demand, and itself bore interest from its maturity at legal rate. *Steele v. City of Waycross*, 187 Ga. 382, 200 S.E. 704 (1938).

**Past due interest a liquidated demand.** — Stipulation in note that interest shall be paid annually renders past due interest a liquidated demand which itself bears interest. *Butler v. First Nat'l Bank*, 13 Ga. App. 35, 78 S.E. 772 (1913).

**Interest note is liquidated demand, which bears interest from maturity.** — When obligation to pay interest is put in form of interest note, that note becomes a liquidated demand; and when it is not paid at maturity it bears interest as such, certainly if parties have contracted that it should. *Byrd v. Equitable Life Assurance Soc'y*, 185 Ga. 628, 196 S.E. 63 (1938).

**Noninterest bearing installment note liquidated debt.** — Note for sum payable in 18 monthly installments, but bearing no interest, is liquidated debt. *Recordex Corp. v. Southeastern Metal Prods., Inc.*, 147 Ga. App. 79, 248 S.E.2d 159 (1978).

**Liquidated insurance claims are subject to prejudgment interest.** — See *Florida Int'l Indem. Co. v. Osgood*, 233 Ga. App. 111, 503 S.E.2d 371 (1998).

**Contract stipulation for attorney's fees was liquidated demand.** — Where note stipulates for attorney's fees in case of collection by suit, it is part of principal debt and bears interest. *Baxter v. Bates*, 69 Ga. 587 (1882).

**County warrant is a liquidated demand.** — A county warrant, which is a liquidated demand even though it does not express any date for payment, is as matter of law payable on demand, made five days after date on which it is issued, and will ordinarily bear interest from and after demand so made. *Marion County v. First Nat'l Bank*, 193 Ga. 263, 18 S.E.2d 475 (1942).

**A debt based on published tariffs is liquidated and bears interest from the time the party becomes liable.** *National Carloading Corp. v. Security Van Lines*, 164 Ga. App. 850, 297 S.E.2d 740 (1982).

**Fraudulently acquired loan.** — An action in fraud to recover a fixed amount of money lost in a fraudulently acquired loan is a liquidated demand eligible for prejudgment interest. *Gorlin v. Halpern*, 184 Ga. App. 10, 360 S.E.2d 729 (1987), *rev'd on other*

grounds sub nom. *Burgess & Brown v. Gorlin & Long*, 258 Ga. 127, 365 S.E.2d 405 (1988).

**Insured's demand for payment of attorney's fees did not become liquidated until judgment,** because the amount of attorney's fees was not fixed and certain until that time. *American Family Life Assurance Co. v. United States Fire Co.*, 885 F.2d 826 (11th Cir. 1989).

**Attorney's fees fixed upon foreclosure of property securing debt.** — Where a promissory note secured by a deed to secure debt provided for payment in a principal amount, together with interest at the rate of nine percent per annum from date until paid in full, together with all costs of collection including 15 percent as attorney's fees if collected by law or through an attorney at law, at the time of the sale of the property at a foreclosure sale after notice, the obligation to pay attorney's fees to the plaintiff had become fixed and certain, and from that time forward interest on such sum began to run. *Bulman v. First Nat'l Bank*, 165 Ga. App. 843, 303 S.E.2d 29 (1983).

**Prejudgment interest claims of materialmen.** — No exclusion is made in O.C.G.A. § 7-4-15 to liquidated demands underpinning a materialman's lien and prejudgment interest is not precluded merely because the aggregate amount of liens exceeds the contract price under O.C.G.A. § 44-14-361.1. *Gaster Lumber Co. v. Browning*, 219 Ga. App. 435, 465 S.E.2d 524 (1995), *aff'd*, 267 Ga. 72, 475 S.E.2d 576 (1996).

**Fact that defendant claimed a credit against undisputed specific amount that plaintiff claimed plaintiff was fully owed under the executed contract would not render plaintiff's claim unliquidated.** The credit only reduced the net balance on the liquidated claim; it would not render the claim unliquidated. *Gold Kist Peanuts v. Alberson*, 178 Ga. App. 253, 342 S.E.2d 694 (1986); *Hendricks v. Blake & Pendleton, Inc.*, 221 Ga. App. 651, 472 S.E.2d 482 (1996).

**Taxes do not bear interest as liquidated demands.** — Taxes are not debts in ordinary sense of word, so as to bear interest as liquidated demands. *State v. Southwestern R.R.*, 70 Ga. 11 (1883).

**Prejudgment interest.** — Where a claim was undisputed, the defendant was entitled



**Liquidated Demands (Cont'd)**

to prejudgment interest at the rate of seven percent per annum from the date the debt became due and the trial court's judgment of prejudgment interest of 18% per annum was in excess of the statutorily required amount. *Turner Constr. Co. v. Electrical Distribs., Inc.*, 202 Ga. App. 726, 415 S.E.2d 325 (1992).

**Ascertainable amount, liquidated.** — Because the amount due on a note and a personal guaranty was ascertainable under their instrumental terms, the damages sought were liquidated. *Consulting Constr. Corp. v. Edwards*, 207 Ga. App. 296, 427 S.E.2d 789 (1993).

**Accounts**

**Open accounts bear interest from due date**, at which time they are considered liquidated demands. *Intercompany Servs. Corp. v. Kleeb*, 140 Ga. App. 512, 231 S.E.2d 505 (1976).

**Account not liquidated demand until amount due is expressly or impliedly fixed and determined.** *Rice-Stix Dry Goods Co. v. Friedlander Bros.*, 30 Ga. App. 312, 117 S.E. 762 (1923), *aff'd*, 158 Ga. 303, 122 S.E. 890 (1924); *Insurance Co. of N. Am. v. Folds*, 42 Ga. App. 306, 155 S.E. 782 (1930); *Firemen's Ins. Co. v. Oliver*, 53 Ga. App. 638, 186 S.E. 706 (1936).

**Assent to correctness of open accounts makes them liquidated demands.** *Anderson v. State*, 2 Ga. 370 (1847); *Kelley & McWilliams v. Terhune*, Nixon & Co., 113 Ga. 365, 38 S.E. 839 (1901); *Council v. Hixon*, 11 Ga. App. 818, 76 S.E. 603 (1912). But see *Fell v. Abbot*, 1 Ga. Rpt. Ann. (R.M.C. 452) 278 (1835).

**Verbal acknowledgment of open account does not render it liquidated.** — Verbal acknowledgment of indebtedness on open account accompanied by promise to pay does not constitute a liquidated demand. *Fell v. Abbot*, 1 Ga. Rpt. Ann. (R.M.C. 452) 278 (1835).

**Written acknowledgment of open account renders account a liquidated demand.** — Acknowledgment of open account by letter is such a liquidation of demand as will enable creditor to obtain interest from date of acknowledgment. *Hicks v. Thomas*, 1 Ga. Rpt. Ann. (Dud. 218) 472.

**Decedent's assent, during lifetime, of correctness of account rendered it liquidated.**

— When decedent in decedent's lifetime assented to correctness of account rendered decedent it became after such assent, a liquidated demand. *Anderson v. State*, 2 Ga. 370 (1847); *Bartee v. Andrews*, 18 Ga. 407 (1855); *Kelley & McWilliams v. Terhune*, Nixon & Co., 113 Ga. 365, 38 S.E. 839 (1901).

**Written guarantee to pay future indebtedness of another, on open account, is not liquidated.** *Hargroves v. Cooke*, 15 Ga. 321 (1854).

**Insurance**

**Policy not liquidated demand until amount of loss and liability established.** — Fire insurance policies which insure against all direct loss or damage by fire to an amount not exceeding named sums, are not themselves liquidated demands, nor is there originally any amount ascertained payable under them. The process of adjustment may result in ascertainment of amount of loss, though liability be denied, in which case interest may be recovered when liability is established. *Merchants Ins. Co. v. Lilgeomont, Inc.*, 84 F.2d 685 (5th Cir. 1936).

In a suit on a property damage insurance policy (e.g., fire, lightning, windstorm, etc.), where liability is not disputed but where the amount of damage is disputed, the amount is unliquidated. *Braner v. Southern Trust Ins. Co.*, 255 Ga. 117, 335 S.E.2d 547 (1985).

In a suit against an insurer under a policy covering rugs, because there was a bona fide dispute between the parties as to the extent of water damage to the rugs that was not resolved until trial, it was only after entry of the judgment that the claim became liquidated, and the trial court did not err in denying an award of prejudgment interest on that claim. *Holloway v. State Farm Fire & Cas. Co.*, 245 Ga. App. 319, 537 S.E.2d 121 (2000).

**Interest accrues on loss from time amount payable becomes certain and due.** — It is the general rule that interest is recoverable on a loss by fire from time when amount payable has been made certain and has become due. *Insurance Co. of N. Am. v. Folds*, 42 Ga. App. 306, 155 S.E. 782 (1930); *Firemen's Ins. Co. v. Oliver*, 53 Ga. App. 638, 186 S.E. 706 (1936).

**Claim for face amount of policy is liquidated demand where loss total.** — Claim for face amount of fire insurance policy on dwelling is to be deemed fixed, certain, and determined under contract, so as to authorize interest thereon, where loss was admittedly total, and insurance company neither prior to nor in action on policy in any way questioned the amount, but based its sole defense on alleged forfeiture of policy by breaches of its conditions. *National Fire Ins. Co. v. Thompson*, 51 Ga. App. 625, 181 S.E. 101 (1935).

Where jury was authorized to find that insurance company agreed to pay full face amount of policy covering undisputed total loss, verdict was not illegal because it included interest. *Sentinel Fire Ins. Co. v. McRoberts*, 50 Ga. App. 732, 179 S.E. 256 (1934).

**Employer's claim for amount recovered by employee as a liquidated demand.** — Demand of employer against insurance company under "Employers' Liability Policy," for loss or damage sustained by the employer by reason of a judgment (together with the cost and expenses thereof) recovered by employee accidentally injured, is a liquidated demand upon which interest may be claimed. *Georgia Iron & Coal Co. v. Ocean Accident & Guar. Corp.*, 133 Ga. 326, 65 S.E. 775 (1909).

**Liability at legal rate on optional no-fault benefits.** — An insurer is indebted for prejudgment interest at the legal rate on optional no-fault benefits, from the date of demand until the date of tender, less the 30-day statutory exclusion under O.C.G.A. § 33-34-6(b). *International Indem. Co. v. Enfinger*, 181 Ga. App. 420, 352 S.E.2d 575 (1986), *aff'd*, 257 Ga. 385, 359 S.E.2d 884 (1987).

**O.C.G.A. § 7-4-15 is inapplicable to prejudgment interest on life insurance proceeds.** *Southwestern Life v. Middle Ga. Neurological*, 262 Ga. 273, 416 S.E.2d 496 (1992).

O.C.G.A. 33-25-10 governs the entitlement to prejudgment interest on life insurance proceeds and does not require the payment of prejudgment interest where the insured dies within 12 months of issuance of the policy. O.C.G.A. § 7-4-15 is inapplicable to prejudgment interest on life insurance proceeds. *Middle Ga. Neurological Specialists v.*

*Southwestern Life Ins. Co.*, 967 F.2d 536 (11th Cir. 1992).

**Insurer subject to prejudgment interest on claim despite agent improperly binding risk.** — Where an insurer had to pay insured because of agent's negligence in binding a risk not within insurer's guidelines, prejudgment interest was appropriate given the fact that the amount in dispute had been at all times certain and fixed, and there has been no dispute over whether the sums paid to insured were excessive or in any other way inappropriate. *Valiant Ins. Co. v. Birdsong*, 665 F. Supp. 918 (M.D. Ga. 1987).

#### When Interest Is Recoverable

**Interest is recoverable from date when amount of claim has been liquidated and determined.** *Insurance Co. of N. Am. v. Folds*, 42 Ga. App. 306, 155 S.E. 782 (1930).

**Prejudgment interest on liquidated demands accrues from the time of demand.** *International Indem. Co. v. Terrell*, 178 Ga. App. 570, 344 S.E.2d 239 (1986).

**Interest on unpaid interest.** — Where a promissory note calls for payment of the principal at a fixed time and for payment of interest on the principal at fixed times during the term of the note, the failure to pay the interest when due renders the past due interest a liquidated demand which would itself bear interest prior to judgment. *Bryant v. Kenerly*, 238 Ga. App. 153, 518 S.E.2d 172 (1999).

The rate of prejudgment interest payable on past due interest is determined by the note if it provides for the interest to be charged on past due interest, but if no such provision is made, then the applicable statutory rate of interest would control. *Bryant v. Kenerly*, 238 Ga. App. 153, 518 S.E.2d 172 (1999).

The award of interest on past due interest under this section is subject to the limitation that, in the absence of a contrary agreement, no such interest on interest may be awarded where the interest installments mature after the principal itself has fallen due. *Bryant v. Kenerly*, 238 Ga. App. 153, 518 S.E.2d 172 (1999).

**Interest on services or property of readily ascertainable value.** — Where amount for which recovery is sought, even though not liquidated, is based upon readily ascertainable value of services or property,

**When Interest Is Recoverable (Cont'd)**

the general and better considered rule is to allow interest, at least in absence of strong equities to the contrary. *Erickson's Inc. v. Travelers Indem. Co.*, 330 F. Supp. 380 (S.D. Ga. 1971), *aff'd*, 454 F.2d 884 (5th Cir.), *cert. denied*, 409 U.S. 847, 93 S. Ct. 51, 34 L. Ed. 2d 87 (1972).

**Interest awarded from time of theft of bailed good.** — The court does not err in instructing the jury that it may award interest from the time of the theft of a bailed good until trial where the jury finds that the sum awarded is a liquidated sum. *Wheels & Brakes, Inc. v. Capital Ford Truck Sales, Inc.*, 167 Ga. App. 532, 307 S.E.2d 13 (1983).

**Award of interest on salary obligation.** — Though interest on unpaid wages was not expressly claimed, jury could allow interest from time wages became due according to terms of contract for amount of money wages was liquidated by contract, and would bear interest from time payment ought to have been made. *Ansley v. Jordan*, 61 Ga. 482 (1878).

There is a definite contractual relation between every employee and employer, whether employee is a public officer or not, which entitles employee to payment of the employee's salary, and where demand is made therefor and refused, the court may award interest on the salary. *Undercofler v. Scott*, 220 Ga. 406, 139 S.E.2d 299 (1964).

**Interest upon valid obligation of a county.** — Interest upon valid subsisting obligation of county is of same nature as principal, and is collectible upon same terms and in same manner as principal. *Hartley v. Nash*, 157 Ga. 402, 121 S.E. 295 (1924).

**Interest recoverable from one who sells land the seller does not own.** — Where one fraudulently sold land which she did not own and received part of purchase money, buyer would be entitled to recover interest on sum so paid from date of payment; if no fraud, interest from date of demand for repayment of money; and if no fraud and no demand, interest from date of filing plea of set-off. *Phillips v. O'Neil*, 85 Ga. 142, 11 S.E. 581 (1890).

**Application of rule for ascertaining interest recoverable on building contract.** — The fair rule to be applied in building contracts is to ascertain the stated debt due at a certain

time and deduct therefrom a reasonable amount for remedying defects. The former should bear interest from date it is ascertained or demanded; the latter should bear interest only from time dispute is resolved, even if it is at trial. *J.A. Jones Constr. Co. v. Greenbriar Shopping Ctr.*, 332 F. Supp. 1336 (N.D. Ga. 1971), *aff'd*, 461 F.2d 1269 (5th Cir. 1972).

**Interest on court orders runs as on other liquidated demands.** — Orders absolute given by inferior courts of counties in this state for payment of money to persons in liquidation of debts due by said courts, draw interest just as other liquidated demands do. *State ex rel. Greer v. Speer*, 33 Ga. 93 (1864).

**Funds whose disposition is affected by court order or garnishment.** — Where payment of funds to rightful owner is prohibited by court order or by garnishment proceeding, interest does not accrue until order or garnishment has been dissolved. *Cochran v. Bank of Hancock County*, 118 Ga. App. 100, 162 S.E.2d 765 (1968).

**Note stipulating it is without interest accrues interest after demand.** — When promissory note specifies that stated sum "without interest" is to be paid on certain date, phrase "without interest" refers only to time between execution of note and date of maturity, as interest will accrue from date holder has right to make demand for payment. *Jenkins v. Morgan*, 100 Ga. App. 561, 112 S.E.2d 23 (1959).

**Interest on earnest money.** — Having found there was no jury issue as to whether the buyers owed the earnest money payment plus interest to sellers under the contract, as well as under principles of promissory estoppel, the trial court erred in failing to award such interest for the period money was due until final judgment. *Ware v. Renfroe*, 231 Ga. App. 529, 499 S.E.2d 907 (1998).

**Cash sale of property** bears interest from date, although day of payment may be postponed until a particular event transpires. *Parke v. Foster*, 26 Ga. 465, 71 Am. Dec. 221 (1858).

**Rent obligation** which is certain and payable on a day certain bears interest therefrom at rate imposed by law if contract is silent as to rate. *In re Cent. of Ga. Ry.*, 47 F. Supp. 786 (S.D. Ga. 1942).

**Interest for remaindermen** does not run until death of tenant for life, the estate being



in money. *McCook v. Harp*, 81 Ga. 229, 7 S.E. 174 (1888).

**Judgment for support bears interest from date rendered.** — Where cash award of year's support to widow could not be paid until four years after judgment, widow was entitled to interest from date of judgment. *Clark v. Georgia R.R. Bank & Trust Co.*, 182 Ga. 472, 185 S.E. 716 (1936).

**Factor entitled to interest upon draft paid upon faith of produce which was never received.** *Field & Adams v. Reid*, 21 Ga. 314 (1857); *Howard v. Behn & Foster*, 27 Ga. 174 (1859).

**Interest recoverable on money fraudulently received or wrongfully detained.** — One who has fraudulently received or wrongfully detained money of another is chargeable with interest thereon from the time the person received it. *Anderson v. State*, 2 Ga. 370 (1847).

**Liability of agent for interest on principal's money held by agent.** — Agent who admits money in agent's hands belonging to agent's principal, is liable for interest thereon from time the agent received it. *Anderson v. State*, 2 Ga. 370 (1847).

**Partner misapplying partnership funds liable for interest.** — Where one partner misapplies partnership funds to the partner's own use, that partner will be held liable for same, with interest thereon from time of such misapplication. *Solomon v. Solomon*, 2 Ga. 18 (1847).

**Interest condemnee must refund to condemnor.** — Where interest is computed on amount which condemnee must refund to condemnor, interest is computed only from date of adjudication of principal amount. *State Hwy. Dep't v. Rogers*, 118 Ga. App. 626, 165 S.E.2d 172 (1968).

**No interest accrued where demand not made upon surety before execution.** — Where there was no evidence in record of any demand upon surety of tax commissioner prior to date of execution, an execution against surety could not properly be issued for interest alleged to have accrued prior to date thereof. *Keen v. Lewis*, 215 Ga. 166, 109 S.E.2d 764 (1959).

**Interest runs from time county treasurer refuses payment of warrant.** — Former Code 1933, § 23-1608 (see O.C.G.A. § 36-11-5) assumed that county treasurer would pay warrant when payment was de-

manded, and if the treasurer failed to do so, the section contemplated that interest would run by virtue of former Code 1933, §§ 57-101 and 57-110 (see O.C.G.A. §§ 7-4-2 and 7-4-15) from date of demand. *Marion County v. First Nat'l Bank*, 193 Ga. 263, 18 S.E.2d 475 (1942).

**Preferred claim against insolvent bank not entitled to interest where none produced.** —

Where bank became insolvent and was taken in charge for liquidation by superintendent of banks for this state, and one had claim to funds held for it by bank which was afterwards adjudicated to be a preferred claim for a specified sum, and where, after final adjudication in favor of standing of claim as a preferred claim, the superintendent of banks paid over amount of principal to claimant, mandamus would not lie to compel superintendent to pay interest accruing on amount of preferred claim after the superintendent took charge of such bank, since fund had not produced interest. *Macon Grocery Co. v. Mobley*, 174 Ga. 185, 162 S.E. 711 (1931).

**Award of interest in breach of contract action.** — Award of prejudgment interest was proper in a hospital's breach of contract action, wherein it was awarded judgment in its favor on a claim for recovery of monies due that had been loaned to a doctor, who did not repay the full sum; pursuant to O.C.G.A. §§ 7-4-15 and 13-6-13, where the balance was a liquidated amount, as here, the court was authorized to award prejudgment interest. *Walker v. Gwinnett Hosp. Sys.*, 263 Ga. App. 554, 588 S.E.2d 441 (2003).

### Effect of Tender

**A tender to prevent running of interest, must be continuing.** — Using money after refusal by creditor to receive it destroys this necessary attribute of a legal tender. *Fortson v. Strickland*, 23 Ga. App. 607, 99 S.E. 147 (1919).

**Interest not allowed from time tender of payment refused or waived.** — A formal tender of payment of note was in effect waived by statement on part of plaintiff, when defendant offered to pay note, that amount due thereon would not be accepted unless amount due on former note was also paid, and plaintiff could not recover interest from that time on first mentioned note. *Washington Exch. Bank v. Smith*, 23 Ga.

**Effect of Tender (Cont'd)**

App. 356, 98 S.E. 418 (1919), rev'd on other grounds, 149 Ga. 650, 101 S.E. 769 (1920).

**Where proof of tender is insufficient, note bears interest after maturity.** *Dumas v. Pepper*, 43 Ga. 361 (1871).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 45 Am. Jur. 2d, Interest and Usury, § 52.

**C.J.S.** — 10 C.J.S., Bills and Notes, §§ 84, 238, 308. 47 C.J.S., Interest and Usury; Consumer Credit, §§ 20, 21.

**ALR.** — Right to interest for period before

advances under a loan to be advanced to the borrower in installments, 40 ALR 825.

Time from which interest is recoverable on demand note or like demand instrument containing no provision as to interest, 45 ALR2d 1202.

### **7-4-16. When interest runs on commercial accounts; maximum interest rate on commercial accounts.**

Unless otherwise provided in writing signed by the obligor, a commercial account becomes due and payable upon the date a statement of the account is rendered to the obligor. The owner of a commercial account may charge interest on that portion of a commercial account which has been due and payable for 30 days or more at a rate not in excess of 1 1/2 percent per month calculated on the amount owed from the date upon which it became due and payable until paid. "Commercial account" means an obligation for the payment of money arising out of a transaction to sell or furnish, or the sale of, or furnishing of, goods or services other than a "retail installment transaction" as defined in paragraph (10) of subsection (a) of Code Section 10-1-2. (Ga. L. 1858, p. 90, § 1; Code 1863, § 2030; Code 1868, § 2031; Ga. L. 1873, p. 22, § 1; Code 1873, § 2057; Code 1882, § 2057; Civil Code 1895, § 2885; Civil Code 1910, § 3435; Code 1933, § 57-111; Ga. L. 1980, p. 514, § 1.)

**Law reviews.** — For survey article on recent developments in Georgia law of remedies, see 34 Mercer L. Rev. 397 (1982).

**JUDICIAL DECISIONS**

**Applicability.** — O.C.G.A. § 7-4-16 was inapplicable in the case of a "security deposit" which represented one party's obligation to return money to another party arising out of the termination of their business relationship; since the security deposit did not represent an obligation for the payment of any goods or services, the first party's right to secure a refund of its security deposit did not render it the owner of a "commercial account." *Race, Inc. v. Wade Leasing, Inc.*, 201 Ga. App. 340, 411 S.E.2d 56 (1991).

O.C.G.A. § 7-4-16 is applicable only to

obligations to pay for goods and services on a commercial account and is inapplicable to obligations to return money arising out of the termination of a business agreement. *Hayden v. Sigari*, 220 Ga. App. 6, 467 S.E.2d 590 (1996).

Because the trial court in an action involving a tax lien encumbrance erred in calculating pre-judgment interest pursuant to O.C.G.A. § 7-4-16, which applies to commercial accounts, remand for re-calculation based on O.C.G.A. § 7-4-15 was required. *Homeland Communities, Inc. v. Rahall &*

Fryer, 235 Ga. App. 440, 509 S.E.2d 714 (1998).

Trial court erred in modifying a judgment to add prejudgment interest as the court could not award prejudgment interest for the debt which was based on a contract claim, an asset purchase agreement; therefore, the debt was not a commercial debt to which O.C.G.A. § 7-4-16 applied. *Capital Cargo, Inc. v. Port of Port Royal, Inc.*, 261 Ga. App. 803, 584 S.E.2d 54 (2003).

**In the absence of a liquidated demand, O.C.G.A. § 7-4-16 is inapplicable.** *Typo-Repro Servs., Inc. v. Bishop*, 188 Ga. App. 576, 373 S.E.2d 758 (1988).

Where there was a question of adequate statement of account regarding charges to a subcontractor, the debts were not liquidated because it was not certain how much was due to the general contractor from the subcontractor. *American Aluminum Prods. Co. v. Binswanger Glass Co.*, 194 Ga. App. 703, 391 S.E.2d 688 (1990).

**Maximum interest rate not mandatory.** — O.C.G.A. § 7-4-16 merely authorizes, but does not mandate, charging the maximum interest therein specified. *Nodvin v. West*, 197 Ga. App. 92, 397 S.E.2d 581 (1990).

**A physician comes within purview of former Code 1933, § 57-111 (see O.C.G.A. § 7-4-16).** *Martin v. Mayer*, 63 Ga. App. 387, 11 S.E.2d 218 (1940).

**Section inapplicable to suits based on quantum meruit.** — Where plaintiff sought recovery on a quantum meruit basis and not for a liquidated demand former Code 1933, §§ 57-110 and 57-111 (see O.C.G.A. §§ 7-4-15 and 7-4-16) were not applicable. *Noble v. Hunt*, 95 Ga. App. 804, 99 S.E.2d 345 (1957).

**What constitutes “statement,”** in his business is clearly a commercial account and is not a retail installment transaction. *McNair v. Gold Kist, Inc.*, 166 Ga. App. 782, 305 S.E.2d 478 (1983).

**Statement.** — Farm supplies supplied to a farmer in the farmer’s business is clearly a commercial account. The owner of a commercial account can charge interest on that portion of the commercial account which had been due and payable for 30 days or more at a rate not in excess of 1½% per month calculated on the amount owed from the date upon which it became due and payable until paid and that a commercial

account is classified or defined as an obligation for the payment of money arising out of a transaction to sell or furnish, or the sale of, or furnishing of goods and services other than a retail installment. *McNair v. Gold Kist, Inc.*, 166 Ga. App. 782, 305 S.E.2d 478 (1983).

The trial court erred in failing to award interest at 18 percent per annum on the amount proved by the undisputed invoices for materials purchased by the plaintiff/subcontractor from the defendant/general contractor, where the plaintiff conceded that the invoices might be construed as a “statement” within the meaning of O.C.G.A. § 7-4-16. *American Aluminum Prods. Co. v. Binswanger Glass Co.*, 194 Ga. App. 703, 391 S.E.2d 688 (1990).

**Claim for interest not novation.** — Creditor’s claim for interest in an action against the debtor and personal guarantor on an open account agreement did not result in a novation of the agreement. *Charles S. Martin Distrib. Co. v. Berhardt Furn. Co.*, 213 Ga. App. 481, 445 S.E.2d 297 (1994).

**Action between contractor and subcontractor.** — Evidence that contractor and subcontractor had been doing business for several years, that their relationship was invoice-based and not contract-based, combined with an explicit statement on the subcontractor’s bid that it did not cover the entirety of the work, supported the latter’s claim based on O.C.G.A. § 7-4-16. *Wheat Enters., Inc. v. Redi-Floors, Inc.*, 231 Ga. App. 853, 501 S.E.2d 30 (1998).

**Action by subcontractor’s supplier against general contractor.** — Where the sums owed to the subcontractor’s supplier arose out of the furnishing of goods to the subcontractor on the project, not out of the furnishing of goods by the supplier to the general contractor, the supplier’s action against the general contractor and the surety on the lien bond was not based on its commercial account with the subcontractor but on its rights under the lien bond — that is, its rights as a lien claimant. Accordingly, the general contractor’s liability did not arise out of failure to pay the amounts owed to the supplier on a commercial account, and O.C.G.A. § 7-4-16 thus was not applicable. *Turner Constr. Co. v. Electrical Distribs., Inc.*, 202 Ga. App. 726, 415 S.E.2d 325 (1992).

**An action for unpaid sales commissions under an employment contract** was not



based on a commercial account and the trial court erred in charging the jury that it could award prejudgment interest at the rate of 1.5 percent a month. *Southern Water Techs., Inc. v. Kile*, 224 Ga. App. 717, 481 S.E.2d 826 (1997).

**Action between attorney and client for attorney fees.** — Trial court did not err in denying the client's motion for a directed verdict on the attorney's claim for prejudgment interest on attorney fees the attorney sought from the client for legal representation of the client because the fees requested were liquidated as the client did not object to the actual amount of the bill and were subject to pre-judgment interest. *Patton v. Turnage*, 260 Ga. App. 744, 580 S.E.2d 604 (2003).

**Interest on Retail Installment and Home Solicitation Sales Act transactions.** — Charges of 1½ percent per month on the unpaid balance on a commercial account were not authorized by the Retail Installment and Home Solicitation Sales Act, even though the agreement involved was the form set forth in the Retail Installment and Home Solicitation Sales Act (O.C.G.A. § 10-1-1 et seq.), because that statute applies only to purchases for personal, family, or household use. *Gold Kist, Inc. v. McNair*, 166 Ga. App. 66, 303 S.E.2d 290 (1983) (decided prior to 1980 amendment).

**Once there is usury, the usury infects any renewal note** for the same debt or any part thereof unless the usury is purged. A determination as to the application of former § 7-4-7, which provided for no limit of interest rates on loans of \$100,000.00 or more, cannot be decided without a complete accounting to purge all usurious interest (to be applied to principal, if paid) and then a determination made as to whether or not the principal of the original note was for \$100,000 or more, which would insulate it against the defense of usury. *McNair v. Gold Kist, Inc.*, 166 Ga. App. 782, 305 S.E.2d 478 (1983).

**Application of rule that change in law will not change transaction's usurious nature.** — Rule that change in the law will not change the usurious character of a transaction applies only to renewals of an originally usurious transaction, and is not applicable where separate purchases are made on an open account, resulting in an entirely new indebted-

ness. *Gold Kist, Inc. v. McNair*, 166 Ga. App. 66, 303 S.E.2d 290 (1983).

**Interest charged outside of agreement.** — Where the supplier made no attempt to charge interest prior to trial, an instruction to the jury, and consequent award, to increase damages by 1½ percent per month was error. *Prince v. Lee Roofing Co.*, 161 Ga. App. 181, 288 S.E.2d 135 (1982).

Where the creditor made no attempt to collect interest on the overdue account prior to filing suit, but alleged in its complaint that it was entitled to interest, there was no error in permitting evidence concerning the accrual of interest on the indebtedness or in charging the provisions of O.C.G.A. § 7-4-16. *Tench v. United States Tsubaki, Inc.*, 191 Ga. App. 248, 381 S.E.2d 319 (1989).

**Summary judgment precluded.** — Where evidence in an action against a defendant-farmer on open account indicated that plaintiff was basing its estimation of defendant's indebtedness on the business records of another corporation it had purchased and the defendant denied indebtedness in the amount claimed by plaintiff, and where plaintiff's affidavit failed to establish defendant's account to be a commercial one authorizing a certain annual finance charge pursuant to O.C.G.A. § 7-4-16, there were issues of material fact yet to be resolved and plaintiff was precluded from summary judgment. *Paulk v. Carolina E. Inc.*, 172 Ga. App. 669, 324 S.E.2d 527 (1984).

**Where contract specified no rate of interest** and complaint merely prayed for "interest" without specifying the rate thereof, pre-judgment interest only at the applicable "legal rate" of 7 percent was authorized pursuant to O.C.G.A. § 7-4-2(a)(1). *Gold Kist Peanuts v. Alberson*, 178 Ga. App. 253, 342 S.E.2d 694 (1986).

**Pretrial pleading is an adequate means of invoking O.C.G.A. § 7-4-16.** *Jack V. Heard Contractors, Inc. v. Moriarity*, 185 Ga. App. 317, 363 S.E.2d 822 (1987).

**Request for prejudgment interest must be specific.** — If the rate allowed under O.C.G.A. § 7-4-16 is sought before trial, the trial court is authorized to grant pre-judgment interest at that rate, but the request must specify the interest rate sought. *Spears v. Allied Eng'g Assocs.*, 186 Ga. App. 878, 368 S.E.2d 818 (1988).

**Request for repudiation must be specific.**

— Where a sales contract was not repudiated, and the due date was not extended as to any of the invoices at issue, the statute of limitations began to run on the date the last invoice was received; a letter requesting an offset did not qualify as repudiation since it only requested, but did not condition repayment upon an offset. *Advance Tufting, Inc. v. Daneshyar*, 259 Ga. App. 415, 577 S.E.2d 90 (2003).

**Prejudgment interest not excessive.**

— Prejudgment interest based on unpaid rent and unpaid taxes was not excessive. *Georgia Color Farms, Inc. v. K.K.L., Ltd. Partnership*, 234 Ga. App. 849, 507 S.E.2d 817 (1998).

**Prejudgment interest on invoices.** — Invoices which were a liquidated debt on a commercial account were subject to prejudgment interest. *Trebor Corp. v. Nutmeg Indus., Inc.*, 208 Ga. App. 697, 431 S.E.2d 402 (1993).

**Post-judgment interest.** — A commercial account is not, by virtue of O.C.G.A. § 7-4-16, transformed into such an “obligation” as would come within the exception to the standard post-judgment interest rate of 12 percent per year that is established by O.C.G.A. § 7-4-12. *ADC Constr. Co. v. Hall*, 202 Ga. App. 119, 413 S.E.2d 522 (1991).

O.C.G.A. § 7-4-16 does not authorize a creditor to recover both pre-judgment and post-judgment interest at the same rate. It would only permit creditor to recover pre-judgment interest at a rate which is “greater than the post-judgment rate” of 12 percent per year that “all judgments in this state shall bear” pursuant to O.C.G.A. § 7-4-12. *ADC Constr. Co. v. Hall*, 202 Ga. App. 119, 413 S.E.2d 522 (1991).

**Disallowing interest on open accounts does not affect law of set-off.** *Meriwether v. Bird*, 9 Ga. 594 (1851).

**Cited in** *Woodfield v. Colzey*, 47 Ga. 122 (1872); *Prentice v. Elliott*, 72 Ga. 154 (1883); *Adkins v. Hutchings*, 79 Ga. 260, 4 S.E. 887 (1887); *McCarthy v. Nixon Grocery Co.*, 126 Ga. 762, 56 S.E. 72 (1906); *Wimbush v. Curry*, 8 Ga. App. 223, 68 S.E. 951 (1910); *McCluskey v. Still*, 32 Ga. App. 641, 124 S.E. 548 (1924); *Donalsonville Chevrolet Co. v. Dickenson*, 41 Ga. App. 392, 153 S.E. 106 (1930); *Mendenhall v. Nalley*, 81 Ga. App. 517, 59 S.E.2d 283 (1950); *Housing Auth. v. New*, 220 Ga. 1, 136 S.E.2d 732 (1964); *Gregory v. Townsend Roofing Co.*, 163 Ga. App. 836, 296 S.E.2d 154 (1982); *Belvin v. Houston Fertilizer & Grain Co.*, 169 Ga. App. 100, 311 S.E.2d 526 (1983); *C & H Couriers, Inc. v. American Mut. Ins. Co.*, 170 Ga. App. 684, 318 S.E.2d 77 (1984); *Lee v. Fuerst & Davis*, 173 Ga. App. 362, 326 S.E.2d 482 (1985); *King v. AMOCO*, 182 Ga. App. 838, 357 S.E.2d 291 (1987); *National Cos. Health Benefit Plan v. St. Joseph’s Hosp.*, 929 F.2d 1558 (11th Cir. 1991); *Lundy v. Low*, 200 Ga. App. 332, 408 S.E.2d 144 (1991); *Stedry v. Mitchell*, 201 Ga. App. 682, 411 S.E.2d 735 (1991); *Tom Barrow Co. v. St. Paul Fire & Marine Ins. Co.*, 205 Ga. App. 10, 421 S.E.2d 85 (1992); *Dalcour Mgt., Inc. v. Sewer Rooter, Inc.*, 205 Ga. App. 681, 423 S.E.2d 419 (1992); *Contract Sales & Serv. Int’l, Inc. v. American Express Travel Related Servs. Co.*, 216 Ga. App. 61, 453 S.E.2d 62 (1994); *Crotts Enters., Inc. v. John Payne Co.*, 219 Ga. App. 173, 464 S.E.2d 844 (1995); *Haughton v. Namano, Inc.*, 222 Ga. App. 644, 476 S.E.2d 31 (1996); *Sanders v. Commercial Cas. Ins. Co.*, 226 Ga. App. 119, 485 S.E.2d 264 (1997); *Owens v. McGee & Oxford*, 238 Ga. App. 497, 518 S.E.2d 699 (1999).

**OPINIONS OF THE ATTORNEY GENERAL****Unpaid interest as liquidated demand.**

— Where a commercial account provides that unpaid interest becomes a “liquidated demand,” such interest may be treated as part of that portion of the account which has

been due and payable, within the meaning of O.C.G.A. § 7-4-16; where such interest has been due and payable for 30 days or more, it may itself accrue interest at the contract rate. 1983 Op. Att’y Gen. No. U83-9.

## RESEARCH REFERENCES

C.J.S. — 47 C.J.S., Interest and Usury;  
Consumer Credit, § 46.

**7-417. Payment applied first to interest; no interest on unpaid interest; exceptions.**

When a payment is made upon any debt, it shall be applied first to the discharge of any interest due at the time, and the balance, if any, shall be applied to the reduction of the principal. If the payment does not extinguish the interest then due, no interest shall be calculated on such balance of interest and interest shall be calculated only on the principal amount up to the time of the next payment. Notwithstanding the foregoing restrictions against charging interest on unpaid interest:

(1) On loans having first priority on real estate and on loans secured by the pledge or assignment of instruments evidencing loans having first priority on real estate, the parties by written contract may lawfully agree that unpaid interest when due shall be added to the unpaid principal balance of the indebtedness and that the increased principal balance of the indebtedness bear interest pursuant to the terms of the contract; and

(2) On loans secured by real estate or secured by real estate and other collateral, the parties by written contract may lawfully agree that, in the event of bankruptcy, the lender or creditor may include interest on its claim pursuant to the terms of the contract. (Orig. Code 1863, § 2028; Code 1868, § 2029; Code 1873, § 2055; Code 1882, § 2055; Civil Code 1895, § 2883; Civil Code 1910, § 3433; Code 1933, § 57-109; Ga. L. 1982, p. 420, §§ 1, 2; Ga. L. 1984, p. 949, § 6; Ga. L. 1995, p. 956, § 1.)

**Law reviews.** — For article discussing methods of computation of finance charges in Georgia consumer credit contracts, see 30

Mercer L. Rev. 281 (1978). For article on Georgia's usury laws and interest on interest, see 8 Ga. St. U.L. Rev. 291 (1992).

## JUDICIAL DECISIONS

**Prepayments applied first to interest due, absent contrary agreement.** — In absence of agreement to contrary, prepayments on a loan must first be applied to interest due and owing at time they are made and then to principal. *First Nat'l Bank v. Appalachian Indus., Inc.*, 146 Ga. App. 630, 247 S.E.2d 422 (1978).

**Section does not prohibit creditor from applying payment upon principal.** — Since former Code 1910, § 3433 (see O.C.G.A. § 7-417) was for benefit of creditor, it did not seem that debtor could be heard to complain on account of interest-bearing

principal having been reduced, with a consequent reduction to debtor of indebtedness, by application of entire payment to principal instead of first extinguishing accrued interest. *Rice-Stix Dry Goods Co. v. Friedlander Bros.*, 30 Ga. App. 312, 117 S.E. 762 (1923), *aff'd*, 158 Ga. 303, 122 S.E. 890 (1924).

**Creditor may apply payment made before interest is due to reduction of principal.** — Where payment was made by debtor, before interest was due on principal of debt, and debtor did not direct that payment be applied to any particular claim, creditor had



right to apply payment to reduction of principal of debt. *Massell Realty Co. v. Chamberlin*, 47 Ga. App. 718, 171 S.E. 311 (1933).

**In the case of a demand note**, no time for payment is expressed; therefore, no interest would be due until payment is demanded. Unless the debtor has stipulated otherwise, the creditor has the right to apply any payments to the reduction of the principal of the debt where no interest was due at the time of payment. *Spillers v. First S. Bank*, 185 Ga. App. 580, 365 S.E.2d 151 (1988).

**Where mortgaged property is sold** proceeds go to payment of interest notes, though they may have been transferred by payee. *Berrie v. Smith*, 97 Ga. 782, 25 S.E. 757 (1896).

**Right to recover interest after payment of principal.** — It is the general rule that right to recover interest after payment of principal sum due depends upon whether interest is due by terms of the contract, or whether it is merely an implied incident to the debt and is allowed by way of damages. If it is due by terms of the contract, payment of principal is no bar to a subsequent recovery of interest, but if it is not due by such terms, payment of principal sum is generally a bar to recovery, except that where the obligation is one which by statute bears interest, this is taken as an equivalent contractual obligation

to pay interest, and in such a case payment of entire principal does not defeat subsequent recovery of accrued interest. *Rice-Stix Dry Goods Co. v. Friedlander Bros.*, 30 Ga. App. 312, 117 S.E. 762 (1923), *aff'd*, 158 Ga. 303, 122 S.E. 890 (1924).

County's payment to landowners who were awarded \$ 16.5 million in a condemnation action was not sufficient to pay principal and interest on the judgment the landowners obtained, and the appellate court held that the landowners were entitled to collect post-judgment interest on the amount which the county still owed. *Threatt v. Forsyth County*, 262 Ga. App. 186, 585 S.E.2d 159 (2003).

**Payment of attorneys fees.** — There is no statutory requirement that credit for proceeds must be applied to attorney fees first. Presumably, this matter is one which may be contractually agreed to by the parties. *Bulman v. First Nat'l Bank*, 165 Ga. App. 843, 303 S.E.2d 29 (1983).

**Cited in** *Price v. Comer & Co.*, 87 Ga. 468, 14 S.E. 122 (1891); *Becker v. Shaw*, 120 Ga. 1003, 48 S.E. 408 (1904); *Young v. First Nat'l Bank*, 22 Ga. App. 58, 95 S.E. 381 (1918); *Worrill v. Hightower Mule Co.*, 32 Ga. App. 396, 124 S.E. 58 (1924); *Humphreys v. W.L. Jessup & Sons*, 43 Ga. App. 274, 158 S.E. 442 (1931); *Reconstruction Fin. Corp. v. Puckett*, 181 Ga. 288, 181 S.E. 861 (1935).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 45 Am. Jur. 2d, Interest and Usury, § 75.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, § 74.

**ALR.** — When statute of limitations begins to run against action to recover interest, 36 ALR 1085.

When contract construed to require interest to be paid in advance, 39 ALR 951.

Right to have usurious payments of interest applied as credit on principal as affected by statute of limitations, 101 ALR 741.

Check in payment of interest or install-

ment of principal as an acknowledgment sufficient to take case out of statute of limitation, 125 ALR 271.

Option of borrower to convey or transfer to lender in full satisfaction of balance due, property covered by mortgage or collateral securing loan, as affecting character as "interest," of payments by borrower, 163 ALR 719.

What is "compound interest" within meaning of statutes prohibiting the charging of such interest, 10 ALR3d 421.

### 7-4-17.1. Refunds from loans on which interest is calculated under the add-on interest method and which are paid off prior to maturity.

Repealed by Ga. L. 1983, p. 1146, § 8, effective March 31, 1983.

**Editor's notes.** — The Code section was based on Ga. L. 1981, p. 1016, § 1.

### 7-4-18. Criminal penalty for excessive interest.

(a) Any person, company, or corporation who shall reserve, charge, or take for any loan or advance of money, or forbearance to enforce the collection of any sum of money, any rate of interest greater than 5 percent per month, either directly or indirectly, by way of commission for advances, discount, exchange, or the purchase of salary or wages; by notarial or other fees; or by any contract, contrivance, or device whatsoever shall be guilty of a misdemeanor; provided, however, that regularly licensed pawnbrokers, as defined in Code Section 44-12-130, are limited in the amount of interest they may charge only by the limitations set forth in Code Section 44-12-131.

(b) This Code section shall not be construed as repealing or impairing the usury laws now existing but shall be construed as being cumulative thereof.

(c) Nothing contained in Code Section 7-4-2 or 7-4-3 shall be construed to amend or modify the provisions of this Code section. (Ga. L. 1908, p. 83, §§ 1, 2; Civil Code 1910, §§ 3444, 3445; Penal Code 1910, § 700; Code 1933, §§ 57-117, 57-9901; Ga. L. 1983, p. 1146, § 5; Ga. L. 2000, p. 1526, § 1.)

**Law reviews.** — For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

For note discussing whether a holder in due course takes free of claims of violations of the usury laws, see 12 Ga. L. Rev. 814 (1978). For note, "State-Imposed Interest Rate Ceilings and Home Equity Loan Scandal in Georgia," see 11 Ga. St. U.L. Rev. 591 (1995).

For comment on Zink v. Davis Fin. Co., 61 Ga. App. 39, 5 S.E.2d 588 (1939), see 2 Ga. B.J. 57 (1940). For comment on Georgia Inv. Co. v. Norman, 231 Ga. 821, 204 S.E.2d 740 (1974), see 26 Mercer L. Rev. 321 (1974).

**Cross references.** — Illegal payday loans, § 16-17-1.

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION CONSTITUTIONALITY APPLICATION

#### General Consideration

**Former Code 1933, § 57-117** (see O.C.G.A. § 7-4-18) was not designed to repeal or impair existing usury laws. Wall v. Lewis, 192 Ga. 652, 16 S.E.2d 430 (1941).

**Former Code 1933, §§ 57-102 and 57-117** (see O.C.G.A. §§ 7-4-1 and 7-4-18) were to be construed and applied as one law. Wall v.

Lewis, 192 Ga. 652, 16 S.E.2d 430 (1941).

**Effect of violation of statute.** — A loan violative of O.C.G.A. § 7-4-18 is illegal, with the result that the lender forfeits the interest but may collect the principal. Norris v. Sigler Daisy Corp., 260 Ga. 271, 392 S.E.2d 242 (1990).

**Construed with § 7-4-2.** — O.C.G.A. § 7-4-18 has its own definition of interest

which prevails over the definition of interest set forth in O.C.G.A. § 7-4-2(a)(3). *Moore v. Comfed Sav. Bank*, 908 F.2d 834 (11th Cir. 1990).

**Construed with § 14-12-131.** — There is no conflict between O.C.G.A. §§ 7-4-18 and 44-12-131 since what is authorized by the pawnshop statute is a combination of charges up to 25% per month, not the imposition of interest alone at a rate of 25% per month. *Fryer v. Easy Money Title Pawn, Inc.*, 183 Bankr. 654 (Bankr. S.D. Ga. 1995).

O.C.G.A. 14-12-131, not O.C.G.A. § 7-4-18, governs pawnshop transactions. *Glinton v. And R, Inc.*, 271 Ga. 864, 524 S.E.2d 481 (1999).

O.C.G.A. 14-12-131, the pawnshop statute, and O.C.G.A. § 7-4-18 are in conflict and cannot be reconciled. *Hooks v. Cobb Ctr. Pawn & Jewelry Brokers, Inc.*, 241 Ga. App. 305, 527 S.E.2d 566 (1999).

The amount of interest on a pawn transaction was regulated by O.C.G.A. § 7-4-18 and was not governed by the five percent limit imposed on general loans by the usury statute. *Hooks v. Cobb Ctr. Pawn & Jewelry Brokers, Inc.*, 241 Ga. App. 305, 527 S.E.2d 566 (1999).

**Charges included in interest.** — Whether an origination fee is considered a “commission for advances,” part of “other fees,” or a “contrivance” or “device,” it is within the scope of the word “interest” as it is used in O.C.G.A. § 7-4-18. That being so, it is considered interest and not principal for the purpose of deciding whether a loan violates that section. *Norris v. Sigler Daisy Corp.*, 260 Ga. 271, 392 S.E.2d 242 (1990).

Charging a nonrebatable, prepaid finance charge may result in a rate of interest greater than five percent for the first month of the loan; if so, this violates O.C.G.A. § 7-4-18. *Evans v. Avco Fin. Servs. of Ga., Inc.*, 130 Bankr. 357 (Bankr. S.D. Ga. 1991).

**“Per month.”** — The phrase “per month” implies an average. *Johnson v. Fleet Fin., Inc.*, 785 F. Supp. 1003 (S.D. Ga. 1992), *aff’d*, 4 F.3d 946 (11th Cir. 1993).

O.C.G.A. § 7-4-18 prohibits loans with interest rates in excess of five percent “per month.” It does not forbid a lender from collecting or accruing the right to collect more than five percent interest “in any month.” *Johnson v. Fleet Fin., Inc.*, 785 F. Supp. 1003 (S.D. Ga. 1992), *aff’d*, 4 F.3d 946 (11th Cir. 1993).

Despite the decision in *Johnson v. Fleet Finance, Inc.*, 785 F. Supp. 1003 (S.D. Ga. 1992), the bankruptcy court disagreed that “per month” implied a monthly average, stating that the legislature required that a criminal usury analysis be on a “per month” basis; however, since the most recent expression of the law by the district court specifically overruled a prior decision of a bankruptcy court within the district, *Johnson*, *supra*, the bankruptcy court was bound by that district court decision. *Wright v. Transamerica Fin. Servs., Inc.*, 144 Bankr. 943 (Bankr. S.D. Ga. 1992).

The rate of interest per month must be calculated based upon the ratio of total interest paid to the total number of months in the loan. *Fleet Fin., Inc. v. Jones*, 263 Ga. 228, 430 S.E.2d 352 (1993).

**Amortization of initial charges.** — Initial charges in the form of discount points and other interest charges during the first month of the loan should be amortized over the life of the loan to calculate what interest rate was charged “per month.” *Johnson v. Fleet Fin., Inc.*, 785 F. Supp. 1003 (S.D. Ga. 1992), *aff’d*, 4 F.3d 946 (11th Cir. 1993).

**Nonrefundable points and origin fees.** — O.C.G.A. § 7-4-18 cannot be construed so as to attribute nonrefundable points and origination fees to the first month of a loan when those items are actually paid over the life of the loan. *Fleet Fin., Inc. v. Jones*, 263 Ga. 228, 430 S.E.2d 352 (1993).

**Legislative intent to protect needy by criminal statute.** — It was the evident purpose of the legislature to make criminal a rate of interest which shocks the moral sense, and to protect the needy by criminal statute from a rate of interest exceeding 5 percent per month. *Wall v. Lewis*, 192 Ga. 652, 16 S.E.2d 430 (1941).

**Section intended to enhance civil penalties.** — Design of former Code 1933, § 57-117 (see O.C.G.A. § 7-4-18) was still to condemn usury, and when usury reached such proportions as more than 5 percent per month, to enhance existing penalties of civil forfeitures by adding criminal penalty of misdemeanor, which would attach and apply to person of usurer. *Wall v. Lewis*, 192 Ga. 652, 16 S.E.2d 430 (1941).

**Sole purpose of section.** — Sole purpose of Ga. L. 1908, p. 83, §§ 1 and 2 (see O.C.G.A. § 7-4-18) is to make it penal to



**General Consideration (Cont'd)**

reserve, charge, or take interest for use of money in excess of 5 percent per month under any contract where relation of debtor or creditor is created or survives. *Jackson v. State*, 5 Ga. App. 177, 62 S.E. 726 (1908); *Wall v. Lewis*, 192 Ga. 652, 16 S.E.2d 430 (1941).

**Section does not authorize five percent per month interest.** — Former Code 1933, §§ 57-101 and 57-117 (see O.C.G.A. §§ 7-4-2 and 7-4-18) considered as they must be with former Code 1933, § 57-101 (see O.C.G.A. § 7-4-1), do not authorize a regularly licensed pawnbroker who lends money on personal property which is taken into the pawnbroker's actual physical possession and stored by the pawnbroker, to charge interest on money so advanced at a rate of 5 percent per month. *Wall v. Lewis*, 192 Ga. 652, 16 S.E.2d 430 (1941).

**Application of rule that change in law does not change transaction's usurious nature.** — Rule that change in the law will not change the usurious character of a transaction applies only to renewals of an originally usurious transaction, and is not applicable where separate purchases are made on an open account, resulting in an entirely new indebtedness. *Gold Kist, Inc. v. McNair*, 166 Ga. App. 66, 303 S.E.2d 290 (1983).

**Cited in** *Patterson v. Moore*, 146 Ga. 364, 91 S.E. 116 (1917); *Bennett v. Lowry*, 167 Ga. 347, 145 S.E. 505 (1928); *Crowe v. State*, 44 Ga. App. 719, 162 S.E. 849 (1932); *Zink v. Davis Fin. Co.*, 61 Ga. App. 39, 5 S.E.2d 588 (1939); *Peoples Bank v. Mayo*, 61 Ga. App. 877, 8 S.E.2d 405 (1940); *Knight v. State*, 64 Ga. App. 693, 14 S.E.2d 225 (1941); *Public Fin. Corp. v. State*, 67 Ga. App. 635, 21 S.E.2d 476 (1942); *Jarvis v. State*, 69 Ga. App. 326, 25 S.E.2d 100 (1943); *Walker v. State*, 73 Ga. App. 20, 35 S.E.2d 391 (1945); *Gersh v. Peacock*, 89 Ga. App. 57, 78 S.E.2d 543 (1953); *Jones v. Community Loan & Inv. Corp.*, 526 F.2d 642 (5th Cir. 1976); *Cohen v. Northside Bank & Trust Co.*, 207 Ga. App. 536, 428 S.E.2d 354 (1993); *Williams v. Powell*, 214 Ga. App. 216, 447 S.E.2d 45 (1994); *Fryer v. Easy Money Title Pawn, Inc.*, 172 Bankr. 1020 (Bankr. S.D. Ga. 1994); *Ransom v. Fleet Fin., Inc.*, 219 Ga. App. 817, 466 S.E.2d 686 (1996); *Orix Credit Alliance, Inc. v. CIT Group/Equipment Fin., Inc.*, 230

Bankr. 213 (Bankr. M.D. Ga. 1998); *S & A Indus., Inc. v. Bank Atlanta*, 247 Ga. App. 377, 543 S.E.2d 743 (2000); *Bell v. Instant Car Title Loans*, 279 Bankr. 890 (Bankr. N.D. Ga. 2002); *Johnson v. Speedee Cash of Columbus, Inc.*, 289 Bankr. 251 (Bankr. M.D. Ga. 2002).

**Constitutionality**

**Section not a constitutional deprivation of rights.** — Former Civil Code 1910, §§ 3444 and 3445 (see O.C.G.A. § 7-4-18) did not violate Constitution of this state; nor did it violate ninth or fourteenth amendments to Constitution of United States. *King v. State*, 136 Ga. 709, 71 S.E. 1093 (1911).

Former Code 1933, § 57-117 (see O.C.G.A. § 7-4-18) was not violative of Constitution of United States, on ground that it was a deprivation of lender's rights. *Atterberry v. State*, 212 Ga. 778, 95 S.E.2d 787 (1956).

**Application**

**O.C.G.A. § 7-4-18 applies only to loans of money and is inapplicable to credit purchases.** *Gold Kist, Inc. v. McNair*, 166 Ga. App. 66, 303 S.E.2d 290 (1983).

**Substance of transaction controls in determining its legality.** — Where profit received by money lender, by whatever name it may be called, and whether lawful on its face or not, is in reality a contrivance or device to obtain amount greater than lawful interest, and is made with intent to violate usury laws, the transaction is illegal, and name by which it is called is altogether immaterial. *Tribble v. State*, 89 Ga. App. 593, 80 S.E.2d 711 (1954).

**Effect of "loan fee".** — Where the combination of the simple interest charged on a loan during the first month of the loan and a nonrebateable "loan fee," which attached upon the signing of the note, resulted in a total interest charge in the first month of the loan which exceeded five percent, the loan was usurious. *Dent v. Associates Equity Servs. Co.*, 130 Bankr. 623 (Bankr. S.D. Ga. 1991).

**Whether contract is mere scheme to evade usury laws is jury question.** — Where controlling question is whether contracts for purchase of stock by borrowers named in indictments were bona fide contracts for value received, or whether they were mere schemes and devices to evade usury laws, this

question is one of fact, and is for jury to determine. *Southern Loan & Inv. Co. v. State*, 68 Ga. App. 75, 22 S.E.2d 108 (1942).

Question whether one intended to exact usury under cover of contrivance or device, or whether charge alleged in contract was a bona fide one for value received, is for jury to determine in prosecutions on charges relating to taking of usurious interests. *Tribble v. State*, 89 Ga. App. 593, 80 S.E.2d 711 (1954).

**Absolute sale of property is not included within terms of Ga. L. 1908, p. 83, §§ 1, 2 (see O.C.G.A. § 7-4-18).** *Jackson v. State*, 5 Ga. App. 177, 62 S.E. 726 (1908).

**Section does not impair right to sell and assign choses in action arising ex contractu.** — Right to purchase salary or wages of another, right of latter to sell same, and right to charge greater rate of discount on such purchases than 5 percent are not affected. *King v. State*, 136 Ga. 709, 71 S.E. 1093 (1911); *Ison Co. v. Atlantic C.L.R.R.*, 17 Ga. App. 459, 87 S.E. 754 (1916).

**Loan with fixed monthly payments and no threat of default.** — Loans which had fixed payments every month, gave no threat of default at closing by the deduction of points and origination fees, gave no threat of default through high interest charges in any given month, and required a set amount of interest every month under the 5 percent permitted by law did not violate the intent of O.C.G.A. § 7-4-18. *Fleet Fin., Inc. v. Jones*, 263 Ga. 228, 430 S.E.2d 352 (1993).

**Purchaser of interest in promissory note at discount.** — Where the borrower had full use of the funds it borrowed originally, the discounted sale of the note did not raise the issue of usury, even though the borrower argued that the purchaser improperly prevented it from sharing in the benefits derived from the discount and the borrower could recover the unpaid loan origination fee. *First Alliance Bank v. Westover, Inc.*, 222 Ga. App. 524, 474 S.E.2d 717 (1996).

**Assignment of wages are not unlawful unless connected with usurious loan.** *Jackson v. Johnson*, 157 Ga. 189, 121 S.E. 230 (1924).

Former Civil Code 1910, §§ 3444 and 3445 (see O.C.G.A. § 7-4-18) did not make unlawful a transaction wherein there was charge by way of commission for advances, discount, exchange, or fees, or purchase of salary or wages, unless connected with a loan

and directly or indirectly constituting all or part of reservation, charge, or taking, for loan or advance of money, or forbearance to enforce collection of sum of money, a rate of interest greater than 5 percent per month. *King v. State*, 136 Ga. 709, 71 S.E. 1093 (1911).

**Series of transactions under guise of wage assignments constituted usury.** — Series of transactions under guise of successive assignments of wages, which constituted a scheme and device for purpose of evading laws against usury, by which sum of \$20.00 was loaned to defendant at interest in sum of \$4.00 payable every two weeks, necessarily was usury. *Jackson v. Bloodworth*, 41 Ga. App. 216, 152 S.E. 289 (1930).

**Former Civil Code 1910, §§ 3444 and 3445 (see O.C.G.A. § 7-4-18) did not attempt to annul contracts violating its provisions.** *West v. Atlanta Loan & Sav. Co.*, 22 Ga. App. 184, 95 S.E. 721 (1918); *Citizens' Bank v. N.C. Hoyt & Co.*, 25 Ga. App. 222, 102 S.E. 837 (1920).

Fact that the charging or taking of interest in excess of five percent per month is made a misdemeanor, punishable by fine and imprisonment, does not render mortgage absolutely void, since laws of this state provide for status of usurious contracts, including mortgages. *Croom v. Jordan*, 20 Ga. App. 802, 93 S.E. 538 (1917).

**Charge for procuring insurance to extent of loan not counted as interest.** — Lender may by contract with borrower obtain insurance to protect former from loss to extent of loan, and charge cost of procuring such insurance to borrower, and such cost cannot be counted as interest charged for money loaned. *Peebles v. State*, 87 Ga. App. 649, 75 S.E.2d 35 (1953).

**Effect of assignment of insurance policy to lender who is also insurer.** — Good faith assignment of insurance policy by borrower to lender does not render transaction usurious merely because of fact that it is taken out with lender which is itself an insurance company, if it does not appear that premium charge was excessive or that borrower was compelled as condition precedent to loan to make a tie-in purchase of insurance with company advancing loan. *Tribble v. State*, 89 Ga. App. 593, 80 S.E.2d 711 (1954).

**Attorney's fees in bankruptcy proceedings.** — Creditor which violated the Georgia

**Application (Cont'd)**

criminal usury statute could only recover the principal. The attorney's fees provision of the note, security agreement, and deed to secure debt were unenforceable and therefore, under § 506 of the Federal Bankruptcy Code, 11 U.S.C. § 506, there was no enforceable provision for recovery of attorney's fees. *Dent v. Associates Fin. Servs., Inc.*, 137 Bankr. 78 (Bankr. S.D. Ga. 1992).

**Pawnbrokers.** — O.C.G.A. § 7-4-18 is applicable to pawn brokers by the clear direct reference to pawnbrokers in the statute and the plain language of the statute. *Fryer v. Easy Money Title Pawn, Inc.*, 183 Bankr. 322 (Bankr. S.D. Ga. 1995).

Pawnshop charge which included a 23% service charge for the customer's use of the pawned automobile, the risk to the lender of that continued use, checking and processing the title to the automobile apparently in addition to an itemized title fee charged under the contract, verifying insurance on the automobile, and making a log for the sheriff's department, constituted interest rather than pawnshop charges since it did not reimburse specific expenses actually incurred by the pawnbroker in connection with the transaction. *Fryer v. Easy Money Title Pawn, Inc.*, 183 Bankr. 322 (Bankr. S.D. Ga. 1995).

**OPINIONS OF THE ATTORNEY GENERAL**

**If a second imposition of fee permitted by O.C.G.A. § 7-3-14(2)** would result in a violation of usury provisions of O.C.G.A. § 7-4-18

such a second imposition would be illegal. 1982 Op. Att'y Gen. No. 82-43.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 45 Am. Jur. 2d, Interest and Usury, § 382 et seq.

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, § 272.

**ALR.** — Right to have usurious payments made on previous obligation applied as payment of principal on renewal, 13 ALR 1244.

Validity of agreement to pay interest on interest, 37 ALR 325; 76 ALR 1484.

Usury as affected by repayment, or borrower's option to repay, loan before maturity, 130 ALR 73; 75 ALR2d 1265.

Retrospective application and effect of statutory provision for interest or changed rate of interest, 4 ALR2d 932; 40 ALR4th 147; 41 ALR4th 694.

Provision for interest after maturity at a rate in excess of legal rate as usurious or otherwise illegal, 28 ALR3d 449.

Reformation of usurious contract, 74 ALR3d 1239.

Practice of exacting usury as a nuisance or ground for injunction, 83 ALR2d 848.

Contingency as to borrower's receipt of money or other property from which loan is to be repaid as rendering loan usurious, 92 ALR3d 623.

Application of usury laws to transactions characterized as "leases," 94 ALR3d 640.

Validity and construction of state statute or rule allowing or changing rate of prejudgment interest in tort actions, 40 ALR4th 147.

Retrospective application and effect of state statute or rule allowing interest or changing rate of interest on judgments or verdicts, 41 ALR4th 694.

**7-4-19. Civil action to enforce chapter.**

The Department of Banking and Finance or the Industrial Loan Commissioner may bring an appropriate civil action to enforce any provision of this chapter whether by injunction or otherwise in any superior court of this state having jurisdiction over one or more defendants. In the case of a loan made pursuant to this chapter by a licensee under Chapter 3 of this title,



relating to industrial loans, such action shall be brought by the Industrial Loan Commissioner. In the case of any other loan, the action shall be brought by the Department of Banking and Finance. (Code 1981, § 7-4-19, enacted by Ga. L. 1983, p. 1146, § 6; Ga. L. 1989, p. 14, § 7.)

#### **7-4-20. Election to forgo application of federal usury laws.**

In enacting Code Sections 7-4-2 through 7-4-5, the General Assembly exercises its prerogative:

(1) Under subsection (b)(2) of Section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221 (12 U.S.C. Section 1735f-7, notes), and declares that the provisions of subsection (a)(1) of Section 501 do not apply to loans, mortgages, credit sales, and advances made in the State of Georgia on and after March 31, 1983; and

(2) Under Section 512 of that act, Public Law 96-221 (12 U.S.C. Section 86a, notes), and declares that the provisions which preempt the law of this state in Section 511 of that act do not apply to business and agricultural loans in amounts of \$1,000.00 or more made in the State of Georgia on and after March 31, 1983. (Code 1981, § 7-4-20, enacted by Ga. L. 1983, p. 1146, § 7; Ga. L. 2004, p. 631, § 7.)

**The 2004 amendment**, effective May 13, 2004, part of an Act to revise, modernize, and correct the Code, inserted “Section” following “U.S.C.” in paragraphs (1) and (2).

#### **7-4-21. Class action barred on claims for violation of interest laws on loans secured by real estate.**

A claim of violation on any loan secured by an interest in real estate may be asserted in an individual action only and may not be the subject of a class action under Code Section 9-11-23 or any other provisions of law.

Nothing contained in this Code section shall be construed to affect any class action which was pending in any court of this state, including any United States courts, on February 15, 1983, as to the parties to and subject matter then before such court. (Code 1981, § 7-4-21, enacted by Ga. L. 1983, p. 1316, § 1; Ga. L. 1984, p. 22, § 7.)

**Law reviews.** — For annual survey article on domestic relations, see 50 Mercer L. Rev. 217 (1998).

ARTICLE 2

RESIDENTIAL SECOND MORTGAGES

7-4-30 through 7-4-36.

Reserved. Repealed by Ga. L. 1983, p. 1146, § 8, effective March 31, 1983.

**Editor's notes.** — The former article was based on the following Acts: Ga. L. 1966, p. 574, §§ 2-6; Ga. L. 1967, p. 637, §§ 1, 2; Ga. L. 1968, p. 1086, § 1; Ga. L. 1975, p. 1114, § 1; Ga. L. 1976, p. 726, §§ 1, 2; Ga. L. 1979, p. 1281, §§ 1, 2; Ga. L. 1980, p. 511, § 3; Ga. L. 1982, p. 3, § 7.

CHAPTER 5

CREDIT CARDS AND CREDIT CARD BANKS

Sec.		Sec.	
7-5-1.	Short title.		enforcement; rules and regulations.
7-5-2.	Definitions.		
7-5-3.	Organization of credit card banks.	7-5-6.	Applicability of banking laws.
7-5-4.	Credit card charges and fees.	7-5-7.	Penalties for violation of chapter [Repealed].
7-5-5.	Regulation of credit card banks;		

**Editor’s notes.** — Ga. L. 1987, p. 268, § 1 effective March 19, 1987, repealed the Code sections formerly codified at this chapter and substituted the current chapter. The former chapter consisted of §§ 7-5-1 through 7-5-7, which dealt with lender credit card charges and was based on Ga. L. 1969, p. 87, §§ 1-6; Ga. L. 1981, p. 732, §§ 1, 2; Ga. L. 1981, Ex. Sess., p. 8.

**Cross references.** — Criminal penalties

for illegal use of credit cards, bank services cards, etc., § 16-9-30 et seq.

**Law reviews.** — For article discussing federal truth in lending provisions and their relation to state laws, see 6 Ga. St. B.J. 19 (1969).

For note discussing transfer fees in home loan assumptions in reference to the Georgia usury laws, see 9 Ga. L. Rev. 454 (1975).

JUDICIAL DECISIONS

**Cited in** Bussey v. Georgia Bankamericard, 516 F.2d 452 (5th Cir. 1975).

RESEARCH REFERENCES

**ALR.** — Liability of holder of credit card or plate for purchases made thereon by another person, 15 ALR3d 1086.

Credit card issuer’s liability, under state laws, for wrongful billing, cancellation, dishonor, or disclosure, 53 ALR4th 231.

7-5-1. Short title.

This chapter shall be known and may be cited as “The Credit Card and Credit Card Bank Act.” (Code 1981, § 7-5-1, enacted by Ga. L. 1987, p. 268, § 1.)

RESEARCH REFERENCES

**ALR.** — What constitutes Truth in Lending Act violation which “was not intentional and resulted from bona fide error not withstanding maintenance of procedures reasonably adapted to avoid any such error” within meaning of § 130(c) of Act (15 USCA § 1640(c)), 153 ALR Fed. 193.



**7-5-2. Definitions.**

As used in this chapter, the term:

(1) “Affiliate” means the same as that set forth in paragraph (1) of Code Section 7-1-4.

(2) “Commissioner” and “department” shall have the meanings provided in paragraphs (13) and (16) of Code Section 7-1-4.

(3) “Credit card” means any type of arrangement or loan agreement pursuant to which a domestic lender or credit card bank gives a debtor the privilege of using a credit card or other credit confirmation or device of any type in transactions out of which debt arises:

(A) By the domestic lender or credit card bank honoring a draft or similar order for the payment of money created, authorized, issued, or accepted by the debtor; or

(B) By the domestic lender or credit card bank paying or agreeing to pay the debtor’s obligation.

(4) “Credit card account” means an arrangement between a domestic lender or credit card bank and a debtor for the creation of debt pursuant to a credit card and under which:

(A) The domestic lender or credit card bank may permit the debtor to create debt from time to time;

(B) The unpaid balance of principal of such debt and the loan, finance, or other appropriate charges are debited to an account;

(C) A loan finance charge is computed or an interest rate imposed upon the outstanding balances of the debtor’s account from time to time; and

(D) The domestic lender or credit card bank is to render bills or statements to the debtor at regular intervals, the amount of which bills or statements is payable by and due from the debtor on a specified date as stated in such bill or statement or, at the option of the debtor, but subject to the terms and conditions of the credit card account, may be paid by the debtor in installments.

(5) “Credit card bank” means a national bank located in this state or a bank organized under the laws of this state which, in either event, the activities of which are limited to those permitted under Code Section 7-5-3.

(6) “Domestic lender” means any bank, savings and loan association, savings bank, credit union, or other business organization organized or chartered under the laws of this state or the United States, which in any

event is authorized by law to accept deposits and make loans and has its principal place of business in this state.

(7) “Foreign lender” means any bank, savings and loan association, savings bank, credit union, or other business organization organized or chartered under the laws of the United States, or any state other than this state, or the District of Columbia, which in any event is authorized by law to accept deposits and make loans and has its principal place of business outside this state.

(8) For purposes of this chapter, “holding company” means any company that controls a domestic or foreign lender or a credit card bank. The term “company” and “control” shall have the meanings set forth in Code Section 7-1-605.

(9) “Qualifying organization” means a corporation, partnership, or other entity which at all times maintains an office in the State of Georgia at which it employs at least 250 persons residing in this state who are directly or indirectly engaged in providing the following services, either for the qualifying organization or on behalf of other domestic or foreign lenders or credit card banks:

(A) The distribution of credit cards or other devices designed and effective to access credit card accounts;

(B) The preparation of periodic statements of amounts due under credit card accounts;

(C) The receipt from credit card holders of amounts paid on or with respect to such accounts; or

(D) The maintenance of financial records reflecting the status of such accounts from time to time.

The term “qualifying organization” shall also include any domestic bank and credit card bank satisfying the employment and activities requirements set forth in this paragraph. (Code 1981, § 7-5-2, enacted by Ga. L. 1987, p. 268, § 1; Ga. L. 1988, p. 13, § 7; Ga. L. 1999, p. 674, § 41.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Applicability of chapter.** — The line of credit arrangement accessed through special drafts drawn on the lender which the borrower may make payable to a third party is clearly governed by the Lender Credit Card Act. The drafts are “lender credit cards” within the meaning of former § 7-5-3(2) since they constitute “credit confirmation or identification.” 1985 Op. Att’y Gen. No. 85-32 (decided under former § 7-5-2).

Where the financial institution issues spe-

cial drafts which the borrower may make payable only to the issuing financial institution and to draw on the line of credit, the borrower must either come back to the financial institution and cash one of the drafts or deposit the draft into the borrower’s checking account at the financial institution and then use the borrower’s personal check drawn on the borrower’s deposit account, the third party would have no reason to know that a credit transaction was tran-

spiring. Thus, lacking the requisite "credit confirmation or identification," it would not be governed by the Lender Credit Card Act, but, rather, would be governed by Georgia's usury provisions found at O.C.G.A. § 7-4-1. 1985 Op. Att'y Gen. No. 85-32 (decided under former § 7-5-2).

Where the drawee bank extends a line of credit to the customer against which the customer may draw by writing checks that would otherwise overdraw the drawee's

checking account, because the customer's checks do not indicate the customer has overdraft protection nor is the customer given any article which the customer could present to a third party to give notification of overdraft protection, this arrangement would be governed by Georgia's general usury provisions rather than the Lender Credit Card Act. 1985 Op. Att'y Gen. No. 85-32 (decided under former § 7-5-2).

### RESEARCH REFERENCES

**C.J.S.** — 47 C.J.S., Interest and Usury; Consumer Credit, § 348.

### 7-5-3. Organization of credit card banks.

Subject to the provisions of this chapter and to the approval of the commissioner, any domestic lender, foreign lender, or holding company may organize, own, and control a credit card bank on the terms and conditions provided in this Code section:

(1) If the credit card bank is to be organized under the laws of this state, such bank shall be organized as provided in Part 8 of Article 2 of Chapter 1 of this title;

(2) In connection with the application to organize, or to own and control a credit card bank, the applicant shall pay applicable fees established by regulation of the department to defray the costs of the investigation and review of the application;

(3) The shares of a credit card bank shall be owned solely by a domestic lender, a foreign lender, or a holding company;

(4) The credit card bank shall conduct its limited deposit taking business only from a single location in this state;

(5) The credit card bank shall at all times maintain capital stock and paid-in surplus as required by regulatory policies of the department but in no event less than \$2 million;

(6) The credit card bank may only engage in the business of soliciting, processing, and making loans pursuant to credit card accounts and conducting such other activities as may be necessary incidents thereto;

(7) The credit card bank may not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others, and it may not accept savings or time deposits of less than \$100,000.00;



(8) The credit card bank must operate in a manner that is not likely to attract customers from the general public in this state to the substantial detriment of other domestic lenders;

(9) The credit card bank shall have, within one year of the date it commences operations, no fewer than 50 employees located in this state devoted to its credit card activities; provided, however, where the credit card bank contracts with a qualifying organization for the performance of services incidental to offering credit card activities, the minimum number of employees in this state shall be determined by the commissioner at a level to assure the continued and substantive presence of the credit card bank in this state for the purpose of conducting its corporate affairs and performing the credit underwriting function and such other activities not subject to contract with the qualifying organization as may be incidental to its servicing of credit card accounts; and

(10) A domestic lender is not required to establish a credit card bank to issue credit cards and create credit card accounts. (Code 1981, § 7-5-3, enacted by Ga. L. 1987, p. 268, § 1; Ga. L. 1999, p. 674, § 42; Ga. L. 2003, p. 843, § 23; Ga. L. 2004, p. 631, § 7.)

**The 2003 amendment**, effective July 1, 2003, substituted “applicable fees established by regulation of the department to defray the cost of the investigation and review of the application” for “a filing fee of \$15,000.00 to the department” at the end of paragraph (2).

**The 2004 amendment**, effective May 13, 2004, part of an Act to revise, modernize, and correct the Code, substituted “costs” for “cost” in paragraph (2).

#### **7-5-4. Credit card charges and fees.**

(a)(1) Notwithstanding the provisions of any other law prescribing, regulating, or limiting interest rates, any domestic lender or credit card bank may charge and collect in connection with a credit card account:

(A) Finance charges at such periodic interest rate or rates computed or imposed on the outstanding balances on the credit card account in any manner as provided in the written agreement governing such credit card account, and such periodic interest rate or rates may vary from time to time in accordance with a schedule or formula contained in such agreement; and

(B) Such other fees and charges as the domestic lender or credit card bank and the debtor may agree upon in the written agreement governing the credit card account, including, but not limited to, cash advance charges, charges for exceeding preestablished credit limits, late fees, delinquency or default charges, returned payment charges, stop payment charges, automated teller machine charges or similar electronic or interchange fees or charges, annual or membership fees, application fees, transaction fees and minimum charges for each

scheduled billing period, premiums for credit life, accident, health, or loss of income insurance, documentary evidence fees, fees or charges for services rendered or for reimbursement of expenses incurred by any domestic lender or credit card bank or their respective agents in connection with the credit card account, and other fees incident to the application for or the opening, administration, and termination of the credit card account, including, without limitation, commitment, application, and processing fees, official fees and taxes, and costs incurred by reason of examination of title, title insurance, inspection, appraisal, recording, mortgage satisfaction, filing fees, or other formal acts necessary or appropriate to the security for the credit card account.

(2) For the purposes of this Code section, Section 85 of the National Bank Act (12 U.S.C. Section 85), and Sections 521, 522, and 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. Sections 1831d, 1831e, and 1831f), the finance charges under subparagraph (a)(1)(A) of this Code section and the charges and fees under subparagraph (a)(1)(B) of this Code section shall be deemed to be, and may be charged and collected as, interest by the domestic lender or credit card bank.

(b) The terms and conditions contained in the written agreement governing the credit card account between the domestic lender or credit card bank and the debtor shall be deemed to be material to the determination of interest, including, but not limited to:

(1) Those provisions relating to the computation and charging of finance charges authorized by subparagraph (a)(1)(A) of this Code section;

(2) The fees and charges authorized by subparagraph (a)(1)(B) of this Code section; and

(3) All other terms and conditions of such written agreement.

(c) A credit card account between any domestic lender or credit card bank and a debtor shall be governed solely by the laws of the State of Georgia and federal law unless otherwise expressly agreed in writing by the parties. A domestic lender or credit card bank may, as specified in the written agreement governing a credit card account, modify in any respect any terms or conditions of such credit card account, upon such prior written notice of such modification as specified by the terms of the written agreement governing the credit card account or by the Truth in Lending Act (15 U.S.C. Section 1601, et seq.). Any such notice provided by a domestic lender or credit card bank shall specify that the debtor has the right to surrender the credit card whereupon the debtor shall have the right to continue to pay off his credit card account in the same manner and under the same terms and conditions as then in effect. The debtor's failure to surrender the credit card prior to the modification's becoming effective

shall constitute a consent to the modification. (Code 1981, § 7-5-4, enacted by Ga. L. 1987, p. 268, § 1; Ga. L. 1990, p. 1, § 1; Ga. L. 1991, p. 94, § 7; Ga. L. 1997, p. 143, § 7; Ga. L. 1999, p. 674, § 43; Ga. L. 2001, p. 4, § 7.)

RESEARCH REFERENCES

<p><b>ALR.</b> — Construction and application of Consumer Credit Protection Act provisions (18 USCS §§ 891-894) prohibiting extortionate credit transactions, 106 ALR Fed. 33.</p>	<p>What constitutes “finance charge” under § 106(a) of the Truth in Lending Act (15 USCA § 1605(a)) or applicable regulations, 154 ALR Fed. 431.</p>
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**7-5-5. Regulation of credit card banks; enforcement; rules and regulations.**

(a) All credit card banks organized under the laws of this state shall be subject to the supervision, regulation, and examination of the department, and the department shall have all enforcement powers with respect thereto as are provided in Chapter 1 of this title.

(b) In the event any credit card bank does not conduct its activities within the limitations provided in Code Section 7-5-3, the department may require such credit card bank to cease all unauthorized activities. In the event such credit card bank fails to abide by such order, the department may in addition to all other rights, remedies, and powers it may have under Chapter 1 of this title:

(1) Impose upon the credit card bank or its parent holding company or domestic lender or foreign lender a penalty of up to \$10,000.00 per day for each day such order is violated; and

(2) Require divestiture of such credit card bank by any domestic lender, foreign lender, or holding company not qualified to acquire such credit card bank on the date it ceased to operate within the limitations imposed by Code Section 7-5-3 and became a “bank” for purposes of Part 18 or Part 19 of Article 2 of Chapter 1 of this title.

(c) The department shall have the power to promulgate rules and regulations implementing the provisions of this chapter. (Code 1981, § 7-5-5, enacted by Ga. L. 1987, p. 268, § 1.)

**7-5-6. Applicability of banking laws.**

(a) A credit card bank shall be subject to the provisions of Chapter 1 of this title except when any rights, powers, privileges, or provisions of Chapter 1 of this title are inconsistent with the rights, powers, privileges, provisions, or limitations of this chapter.

(b) A credit card bank shall not be considered a “bank” for the purposes of Part 18 or Part 19 of Article 2 of Chapter 1 of this title; provided, however, every domestic lender, foreign lender, or holding company owning a credit



card bank shall be subject to the provisions of Code Section 7-1-607, which concerns registration, reporting, and examination. (Code 1981, § 7-5-6, enacted by Ga. L. 1987, p. 268, § 1; Ga. L. 1999, p. 674, § 44.)

**7-5-7. Penalties for violation of chapter.**

Repealed by Ga. L. 1987, p. 268, § 1, effective March 19, 1987.

**Editor's notes.** — For former Code section, see editor's notes following the chapter heading.

CHAPTER 6

CREDIT OR LOAN DISCRIMINATION

Sec. 7-6-1.	Discrimination in extending credit or making loans prohibited.	Sec. 7-6-2.	Cause of action for individual discriminated against.
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**Cross references.** — Prohibition of discrimination in sale, lease, financing, etc., of housing accommodations, § 8-3-200 et seq.

**7-6-1. Discrimination in extending credit or making loans prohibited.**

(a) No bank, lending company, financial institution, retail installment seller, or person extending credit may discriminate or provide requirements which discriminate in the extending of credit or the making of loans solely on the basis of sex, race, religion, national origin, or marital status.

(b) Any person, firm, or corporation which willfully violates any provision of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$1,000.00. (Ga. L. 1975, p. 772, §§ 1, 3.)

RESEARCH REFERENCES

**ALR.** — Recovery of damages as remedy for wrongful discrimination under state or local civil rights provisions, 85 ALR3d 351.

**7-6-2. Cause of action for individual discriminated against.**

Any person denied a loan or credit solely on the basis of discrimination because of sex, race, religion, national origin, or marital status shall have a right to bring an action for damages in any court of competent jurisdiction in an individual, but not in a representative, capacity against the person, firm, or corporation violating this chapter. (Ga. L. 1975, p. 772, § 2.)

RESEARCH REFERENCES

<b>ALR.</b> — Recovery of damages for emotional distress resulting from discrimination because of sex or marital status, 61 ALR3d 944.	ful discrimination under state or local civil rights provisions, 85 ALR3d 351.
Recovery of damages as remedy for wrong-	Requiring apology as “affirmative action” or other form of redress under State Civil Rights Act, 85 ALR3d 402.

## CHAPTER 6A

## GEORGIA FAIR LENDING ACT

Sec.		Sec.	
7-6A-1.	Short title.	7-6A-9.	Terms of insurer providing insurance through financed premiums.
7-6A-2.	Definitions.	7-6A-10.	Severability of chapter.
7-6A-3.	Limitations of home loans.	7-6A-11.	Municipality or county not able to regulate terms of home loans.
7-6A-4.	"Flipping" a home loan; costs and fees.	7-6A-12.	Application; preemption by federal law.
7-6A-5.	Limitations of high-cost home loans.	7-6A-13.	Promulgation of rules and regulations; creditor's good faith reliance on guidance from department constituting prima facie evidence of compliance.
7-6A-6.	Affirmative claims and defenses against creditors; conditions for relief; actions intending to evade chapter prohibited.		
7-6A-7.	Violation of chapter.		
7-6A-8.	Enforcement of chapter; penalties for violations.		

**Effective date.** — This chapter became effective October 1, 2002.

**Cross references.** — Underwriting and rate risk, § 33-24-90 et seq.

**Law reviews.** — For note on the 2002 enactment of this chapter, see 19 Ga. St. U.L. Rev. 14 (2002).

## OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting.** — Offenses arising under O.C.G.A. Ch. 6A, T. 7 and designated as misdemeanors under O.C.G.A. § 7-6A-8 re-

quire fingerprinting. 2002 Op. Att'y Gen. No. 2002-7.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 17 Am. Jur. 2d., Consumer and Borrower Protection, § 264 et seq.

## 7-6A-1. Short title.

This chapter shall be known and may be cited as the "Georgia Fair Lending Act." (Code 1981, § 7-6A-1, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1.)

**Cross references.** — Vehicle protection product warranty cannot be condition to car loan, § 33-34A-9.

**Editor's notes.** — Ga. L. 2003, p. 1, § 1, effective March 7, 2003, reenacted this Code section without change.

## 7-6A-2. Definitions.

As used in this chapter, the term:



(1) “Acceleration” means a demand for immediate repayment of the entire balance of a home loan.

(2) “Affiliate” means any company that controls, is controlled by, or is under common control with another company, as set forth in 12 U.S.C. Section 1841, et seq.

(3) “Annual percentage rate” means the annual percentage rate for the loan calculated at closing according to the provisions of 15 U.S.C. Section 1606, the regulations promulgated thereunder by the Board of Governors of the Federal Reserve System, and the Official Staff Commentary on Regulation Z published by the Board of Governors of the Federal Reserve System.

(4) “Bona fide discount points” means loan discount points knowingly paid by the borrower for the express purpose of reducing, and which in fact do result in a bona fide reduction of, the interest rate applicable to the home loan; provided, however, that the undiscounted interest rate for the home loan does not exceed by more than one percentage point the required net yield for a 90 day standard mandatory delivery commitment for a home loan with a reasonably comparable term from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater.

(5) “Borrower” means any natural person obligated to repay the loan including a coborrower or cosigner.

(6) “Creditor” means a person who both regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments and is a person to whom the debt arising from the home loan transaction is initially payable. Creditor shall also mean any person brokering a home loan, which shall include any person who directly or indirectly for compensation solicits, processes, places, or negotiates home loans for others or offers to solicit, process, place, or negotiate home loans for others or who closes home loans which may be in the person’s own name with funds provided by others and which loans are thereafter assigned to the person providing the funding of such loans, provided that creditor shall not include a person who is an attorney providing legal services in association with the closing of a home loan. A creditor shall not include: (A) a servicer; (B) an assignee; (C) a purchaser; or (D) any state or local housing finance agency or any other state or local governmental or quasi-governmental entity.

(7) “High-cost home loan” means a home loan in which the terms of the loan meet or exceed one or more of the thresholds as defined in paragraph (17) of this Code section.

(8) “Home loan” means a loan, including an open-end credit plan where the principal amount does not exceed the conforming loan size

limit for a single-family dwelling as established by the Federal National Mortgage Association and the loan is secured by a mortgage, security deed, or deed to secure debt on real estate located in this state upon which there is located or there is to be located a structure or structures, including a manufactured home, designed principally for occupancy of from one to four families and which is or will be occupied by a borrower as the borrower's principal dwelling, except that home loan shall not include:

(A) A reverse mortgage transaction;

(B) A loan that provides temporary financing for the acquisition of land by the borrower and initial construction of a borrower's dwelling thereon or the initial construction of a borrower's dwelling on land owned by the borrower;

(C) A bridge loan made to a borrower pending the sale of the borrower's principal dwelling or a temporary loan made to a borrower and secured by the borrower's principal dwelling pending the borrower's obtaining permanent financing for such principal dwelling;

(D) A loan secured by personal property including, but not limited to, a motor vehicle, motor home, boat, or watercraft and also secured by the borrower's principal dwelling to provide the borrower with potential income tax advantages when such personal property is the primary collateral for such loan;

(E) A new loan secured by a borrower's principal dwelling as a result of a lien taken in connection with a debt previously contracted or incurred when the loan documents for such new loan do not include a mortgage, security deed, or deed to secure debt expressly securing such new loan; or

(F) A loan primarily for business, agricultural, or commercial purposes.

(9) "Make" or "makes" means to originate a loan or to engage in brokering of a home loan including the soliciting, processing, placing, or negotiating of a home loan made or offered by a person brokering a home loan.

(10) "Manufactured home" means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length or, when erected on site is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when erected on land secured in conjunction with the real property on which the manufactured home is located and connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any

structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq. Such term does not include rental property or second homes or manufactured homes when not secured in conjunction with the real property on which the manufactured home is located.

(11) "Open-end credit plan" or "open-end loan" means a loan in which (A) a creditor reasonably contemplates repeated transactions; (B) the creditor may impose a finance charge from time to time on an outstanding balance; and (C) the amount of credit that may be extended to the borrower during the term of the loan, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

(12) "Points and fees" means:

(A) All items included in the definition of finance charge in 12 C.F.R. 226.4(a) and 12 C.F.R. 226.4(b) except interest or the time price differential. All items excluded under 12 C.F.R. 226.4(c) are excluded from points and fees, provided that for items under 12 C.F.R. 226.4(c)(7) the creditor does not receive direct or indirect compensation in connection with the charge and the charge is not paid to an affiliate of the creditor;

(B) All compensation paid directly or indirectly to a mortgage broker from any source, including a broker that originates a loan in its own name in a table funded transaction, including but not limited to yield spread premiums, yield differentials, and service release fees, provided that the portion of any yield spread premium that is both disclosed to the borrower in writing and used to pay bona fide and reasonable fees to a person other than the creditor or an affiliate of the creditor for the following purposes is exempt from inclusion in points and fees: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspection performed prior to closing; credit reports; surveys; attorneys' fees, if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges, so long as not otherwise included under subparagraph (A) of this paragraph; title insurance premiums; and fire and hazard insurance and flood insurance premiums, provided that the conditions set forth in 12 C.F.R. 226.4(d)(2) are met;

(C) Premiums or other charges for credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance,



debt suspension coverage or debt cancellation coverage, whether or not such coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a home loan and premiums or other charges for life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance. In determining points and fees for the purposes of this paragraph, premiums or other charges shall only include those payable at or before loan closing and are included whether they are paid in cash or financed and whether the amount represents the entire premium for the coverage or an initial payment;

(D) The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents. Mortgage interest that may accrue in advance of payment in full of a loan made under a local, state, or federal government sponsored mortgage insurance or guaranty program, including a Federal Housing Administration program, shall not be considered to be a prepayment fee or penalty;

(E) All prepayment fees or penalties that are charged to the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor;

(F) For open-end loans, points and fees are calculated in the same manner as for loans other than open-end loans, based on the minimum points and fees that a borrower would be required to pay in order to draw on the open-end loan an amount equal to the total credit line; and

(G) Points and fees shall not include:

(i) Taxes, filing fees, recording, and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest;

(ii) Bona fide and reasonable fees paid to a person other than the creditor or an affiliate of the creditor for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees, if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges, so long as not otherwise included under subparagraph (A) of this paragraph; title insurance premiums; and fire and hazard insurance and flood insurance premiums, provided that the conditions in 12 C.F.R. 226.4(d)(2) are met;

(iii) Bona fide fees paid to a federal or state government agency that insures payment of some portion of a home loan, including, but

not limited to, the Federal Housing Administration, the Department of Veterans Affairs, the United States Department of Agriculture for rural development loans, or the Georgia Housing and Finance Authority; and

(iv) Notwithstanding any provision to the contrary in this chapter, compensation in the form of premiums, commissions, or similar charges paid to a creditor or any affiliate of a creditor for the sale of: (I) title insurance; or (II) insurance against loss of or damage to property or against liability arising out of the ownership or use of property, provided that the conditions in 12 C.F.R. 226.4(d)(2) are met.

(13) “Process,” “processes,” or “processing” means to act as a processor.

(14) “Processor” means any person that prepares paperwork necessary for or associated with the closing of a home loan, including but not limited to promissory notes, disclosures, deeds, and closing statements, provided that processor shall not include persons on the grounds that they are engaged in data processing or statement generation services for home loans.

(15) “Servicer” means the same as set forth in 24 C.F.R. 3500.2.

(16) “Servicing” means the same as set forth in 24 C.F.R. 3500.2.

(17) “Threshold” means:

(A) Without regard to whether the loan transaction is or may be a “residential mortgage transaction” as that term is defined in 12 C.F.R. 226.2(a)(24), the annual percentage rate of the loan is such that it equals or exceeds that set out in Section 152 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. Section 1602(aa), and the regulations adopted pursuant thereto by the Federal Reserve Board, including Section 12 C.F.R. 226.32; or

(B) The total points and fees payable in connection with the loan, excluding not more than two bona fide discount points, exceed: (i) 5 percent of the total loan amount if the total loan amount is \$20,000.00 or more or (ii) the lesser of 8 percent of the total loan amount or \$1,000.00 if the total loan amount is less than \$20,000.00.

(18) “Total loan amount” means the amount calculated as set forth in 12 C.F.R. 226.32(a) and under the Official Staff Commentary of the Board of Governors of the Federal Reserve System. For open-end loans, the total loan amount shall be calculated using the total credit line available under the terms of the home loan as the amount financed. (Code 1981, § 7-6A-2, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1.)

**The 2003 amendment**, effective March 7, 2003, rewrote this Code section.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2002, a comma was

inserted following “are excluded from points and fees ” in subparagraph (13)(A) (now subparagraph (12)(A)).

### 7-6A-3. Limitations of home loans.

All home loans shall be subject to the following limitations and prohibited practices:

(1) No creditor shall make a home loan that finances, directly or indirectly:

(A) Any credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance, debt suspension coverage, or debt cancellation coverage, whether or not such coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a home loan; or

(B) Any life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance;

provided, however, that for the purposes of this Code section, any premiums or charges calculated and paid on a monthly basis shall not be considered financed directly or indirectly by the creditor;

(2) No creditor or servicer shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a home loan that refinances all or any portion of such existing loan or debt;

(3) No creditor or servicer may charge a borrower a late payment charge unless the loan documents specifically authorize the charge, the charge is not imposed unless the payment is past due for ten days or more, and the charge does not exceed 5 percent of the amount of the late payment. A late payment charge may not be imposed more than once with respect to a particular late payment. If a late payment charge is deducted from a payment made on the home loan and such deduction results in a subsequent default on a subsequent payment, no late payment charge may be imposed for such default. A lender may apply any payment made in the order of maturity to a prior period's payment due even if the result is late payment charges accruing on subsequent payments due; and

(4) No creditor or servicer may charge a fee for informing or transmitting to any person the balance due to pay off a home loan or to provide a release upon prepayment. When such information is provided by facsimile or if it is provided upon request within 60 days of the fulfillment of a previous request, a creditor or servicer may charge a



processing fee up to \$10.00. Payoff balances shall be provided within a reasonable time but in any event no more than five business days after the request. (Code 1981, § 7-6A-3, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1.)

**The 2003 amendment**, effective March 7, 2003, inserted a comma after “debt suspension coverage” in subparagraph (1)(A), substituted “monthly basis” for “periodic basis that are not added to the principal of the loan” near the end of the undesignated ending paragraph in paragraph (1), and rewrote paragraph (3).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2002, in paragraph (1), a semicolon was substituted for a comma in the introductory paragraph and “Any” was substituted for “any” at the beginning of subparagraphs (A) and (B).

#### **7-6A-4. “Flipping” a home loan; costs and fees.**

(a) No creditor may knowingly or intentionally engage in the unfair act or practice of “flipping” a home loan. Flipping a home loan is the consummating of a high-cost home loan to a borrower that refinances an existing home loan that was consummated within the prior five years when the new loan does not provide reasonable, tangible net benefit to the borrower considering all of the circumstances including, but not limited to, the terms of both the new and refinanced loans, the cost of the new loan, and the borrower’s circumstances.

(b) The home loan refinancing transaction shall be presumed to be a flipping where a high-cost home loan refinances an existing home loan that was consummated within the prior five years and that is a special mortgage originated, subsidized, or guaranteed by or through a state, tribal, or local government or a nonprofit organization, which either bears a below-market interest rate at the time the loan was originated or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions and where, as a result of the refinancing, the borrower will lose one or more of the benefits of the special mortgage. Notwithstanding any provision to the contrary contained in this chapter, home loan refinancing transactions of first mortgage loans originated by, purchased by, or assigned to the Georgia Housing and Finance Authority shall not be presumed to be a flipping under this subsection.

(c) Notwithstanding any provision to the contrary contained in this chapter regarding costs and attorneys’ fees, in any action instituted by a borrower who alleges that the defendant violated this Code section, the borrower shall be entitled to costs and attorneys’ fees only if the presiding judge, in the judge’s discretion, allows reasonable attorneys’ fees and costs to the borrower as prevailing party, such fees and costs to be taxed as a part of the court costs and payable by the losing party upon a finding by the presiding judge that the party charged with the violation has willfully

engaged in the act or practice and there was unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such action. (Code 1981, § 7-6A-4, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1; Ga. L. 2004, p. 631, § 7.)

**The 2003 amendment**, effective March 7, 2003, designated the existing provisions as subsections (a) and (b); in subsection (a), inserted “knowingly or intentionally” in the first sentence, in the second sentence, substituted “a home loan is the consummating of a high cost” for “occurs when a creditor makes a covered”, and substituted “circumstances including, but not limited to,” for “circumstances, including”, and deleted “In

addition, the” at the end; in subsection (b), in the first sentence, added “The” at the beginning and substituted “high-cost home” for “covered home” near the middle, and added the last sentence; and added subsection (c).

**The 2004 amendment**, effective May 13, 2004, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (a).

### **7-6A-5. Limitations of high-cost home loans.**

High-cost home loans shall be subject to the following limitations and prohibited practices:

(1) No prepayment fees or penalties shall be provided for in the loan documents for a high-cost home loan or charged the borrower after the last day of the twenty-fourth month following the loan closing or which exceed in the aggregate:

(A) In the first 12 months after the loan closing, more than 2 percent of the loan amount prepaid; or

(B) In the second 12 months after the loan closing, more than 1 percent of the amount prepaid;

(2) A high-cost home loan shall not contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower;

(3) A high-cost home loan shall not include payment terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due;

(4) A high-cost home loan shall not contain a provision that increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided that the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness;

(5) A high-cost home loan shall not include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower;

(6) Without regard to whether a borrower is acting individually or on behalf of others similarly situated, any provision of a high-cost home loan agreement that allows a party to require a borrower to assert any claim or defense in a forum that is less convenient, more costly, or more dilatory for the resolution of a dispute than a judicial forum established in this state where the borrower may otherwise properly bring the claim or defense or limits in any way any claim or defense the borrower may have is unconscionable and void;

(7) A creditor shall not make a high-cost home loan without first receiving certification from a counselor with a third-party nonprofit organization approved by the United States Department of Housing and Urban Development or the Georgia Housing and Finance Authority that the borrower has received counseling on the advisability of the loan transaction. No creditor, servicer, or its institution shall be required to contribute to the funding of any nonprofit organization that provides counseling required pursuant to this paragraph;

(8) A creditor shall not make a high-cost home loan unless a reasonable creditor would believe at the time the loan is consummated that the borrower residing in the home will be able to make the scheduled payments associated with the loan based upon a consideration of his or her current and expected income, current obligations, employment status, and other financial resources, other than the borrower's equity in the collateral that secures repayment of the loan. There is a rebuttable presumption that the borrower residing in the home is able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, said borrower's total monthly debts, including amounts under the loan, do not exceed 50 percent of said borrower's monthly gross income as verified by tax returns, payroll receipts, and other third-party income verification;

(9) A creditor or servicer shall not pay a contractor under a home improvement contract from the proceeds of a high-cost home loan unless:

(A) The creditor or servicer is presented with an affidavit of the contractor that the work has been completed, which affidavit meets the requirements of Code Section 44-14-361.2; and

(B) The proceeds are disbursed in an instrument payable to the borrower or jointly to the borrower and the contractor or, at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the drafter of the instrument, and the contractor prior to the disbursement;

(10) A creditor or servicer shall not charge a borrower any fees or other charges to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan;



(11) A creditor who makes a high-cost home loan and who has the legal right to foreclose shall provide notice of the intent to foreclose to the borrower in writing by certified mail, return receipt requested, to the address of the borrower last known to the creditor. Such notice shall be sent to the borrower at least 14 days prior to the publication of the legal advertisement required by Code Section 44-14-162;

(12) If a creditor or servicer asserts that grounds for acceleration of a high-cost home loan exist and requires the payment in full of all sums secured by the security instrument, the borrower or anyone authorized to act on the borrower's behalf shall have the right at any time, up to the time title is transferred by means of foreclosure by judicial proceeding and sale or otherwise, to cure the default and reinstate the high-cost home loan by tendering the total amount of principal, interest, late fees, and escrow deposits in arrears, not including any acceleration. Cure of default as provided in this paragraph shall reinstate the borrower to the same position as if the default had not occurred and shall nullify as of the date of the cure any acceleration of any obligation under the security instrument or note arising from the default;

(13)(A) To cure a default under this Code section, a borrower shall not be required to pay any charge, fee, or penalty attributable to the exercise of the right to cure a default as provided for in this Code section, other than the fees specifically allowed by this Code section. The borrower shall not be liable for any attorneys' fees relating to the borrower's default that are incurred by the creditor or servicer prior to or during the 30 day period set forth in this paragraph, nor for any such fees in excess of \$100.00 that are incurred by the creditor or servicer after the expiration of the 30 day period but prior to the time the creditor or servicer files a foreclosure action or takes other action to seize or transfer ownership of the home. After the creditor or servicer files a foreclosure action or takes other action to seize or transfer ownership of the home, the borrower shall only be liable for attorneys' fees that are reasonable and actually incurred by the creditor or servicer based on a reasonable hourly rate and a reasonable number of hours plus any other reasonable and necessary expenses incurred by the creditor or servicer.

(B) If a default is cured prior to the initiation of any action to foreclose or to seize or transfer a home, the creditor or servicer shall not institute the foreclosure proceeding or other action for that default. If a default is cured after the initiation of any action to foreclose, the creditor or servicer shall take such steps as are necessary to terminate the foreclosure proceeding or other action.

(C) Before any action is filed to foreclose upon the home or other action is taken to seize or transfer ownership of a home, a notice of the right to cure the default must be delivered to the borrower informing the borrower of the following:

(i) The nature of the default claimed on the high-cost home loan and of the borrower's right to cure the default by paying the sum of money required to cure the default. If the amount necessary to cure the default will change during the 30 day period after the effective date of the notice due to the application of a daily interest rate or the addition of late fees as allowed by this chapter, the notice shall give sufficient information to enable the borrower to calculate the amount at any point during the 30 day period;

(ii) The date by which the borrower shall cure the default to avoid acceleration and initiation of foreclosure or other action to seize the home which date shall not be less than 30 days after the date the notice is effective and the name and address and phone number of a person to whom the payment or tender shall be made;

(iii) That, if the borrower does not cure the default by the date specified, the creditor or servicer may take steps to terminate the borrower's ownership in the property by commencing a foreclosure proceeding or other action to seize the home; and

(iv) The name and address of the creditor or servicer and the telephone number of a representative of the creditor or servicer whom the borrower may contact if the borrower disagrees with the creditor's or servicer's assertion that a default has occurred or the correctness of the creditor's or servicer's calculation of the amount required to cure the default;

(14) A high-cost home loan shall not contain nor shall a creditor or servicer enforce a provision that permits a creditor or servicer, in its sole discretion, to accelerate the indebtedness. This paragraph does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan; and

(15) All high-cost home loan documents that create a debt or pledge property as collateral shall contain the following notice on the first page in a conspicuous manner: "Notice: This is a mortgage subject to special rules under the 'Georgia Fair Lending Act.' Purchasers or assignees of this mortgage may be liable for all claims and defenses by the borrower with respect to the mortgage." (Code 1981, § 7-6A-5, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1; Ga. L. 2004, p. 631, § 7.)

**The 2003 amendment**, effective March 7, 2003, substituted "attorneys' fees" for "attorney fees" in the second and third sentences of subparagraph (13)(A).

**The 2004 amendment**, effective May 13, 2004, part of an Act to revise, modernize,

and correct the Code, substituted "provided that the change" for "provided the change" near the middle of the second sentence of paragraph (4).

**7-6A-6. Affirmative claims and defenses against creditors; conditions for relief; actions intending to evade chapter prohibited.**

(a) Notwithstanding any other provision of law, where a home loan was made, arranged, or assigned by a person selling home improvements to the dwelling of a borrower, the borrower may assert against the creditor all affirmative claims and any defenses that the borrower may have against the seller or home improvement contractor, provided that this subsection shall not apply to loans other than high-cost home loans unless applicable law requires a certificate of occupancy, inspection, or completion to be obtained and said certificate is not obtained.

(b) Notwithstanding any other provision of law, any person who purchases, is assigned, or otherwise becomes a holder of a high-cost home loan shall be subject to all affirmative claims and any defenses with respect to the high-cost home loan that the borrower could assert against the creditor of the high-cost home loan, unless the purchaser or holder demonstrates, by a preponderance of the evidence, that the purchaser or holder exercised reasonable due diligence at the time of purchase of the home loans, or within a reasonable time thereafter, intended to prevent the purchaser or holder from purchasing or taking assignment of high-cost home loans.

(c) The relief granted in an action pursuant to subsection (b) of this Code section:

(1) May be asserted by the borrower only in an individual action and shall not exceed the sum of the amount of all remaining indebtedness of the borrower under such loan and reasonable attorneys' fees in such individual action;

(2) May be sought by the borrower of a high-cost home loan after notice of acceleration or foreclosure of the high-cost home loan, asserting a violation of Code Section 7-6A-4 or 7-6A-5 in an individual action to enjoin foreclosure or to preserve or obtain possession of the home secured by the high-cost home loan; and

(3) Must be brought within one year from the date of the occurrence of the violation; provided, however, a borrower shall not be barred from asserting a violation of Code Section 7-6A-5 in an action to collect the debt which was brought more than one year from the date of the occurrence of such a violation as a matter of defense by recoupment or set-off in such action except as otherwise provided by law.

(d) It shall be a violation of this chapter for any person to attempt in bad faith to avoid the application of this chapter by dividing any loan transaction into separate parts or structuring a home loan transaction as an open-end loan for the purpose of evading the provisions of this chapter when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan or engaging in any other subterfuge with



the intent of evading any provision of this chapter. (Code 1981, § 7-6A-6, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1.)

**The 2003 amendment**, effective March 7, 2003, deleted “, any assignee, or holder in any capacity” following “against the creditor” in the middle of subsection (a); and rewrote subsections (b) and (c).

**7-6A-7. Violation of chapter.**

(a) Any creditor found by a preponderance of the evidence to have violated this chapter shall be liable to the borrower for the following:

- (1) Actual damages, including consequential and incidental damages;
- (2) Statutory damages equal to the recovery of two times the interest paid under the loan and forfeiture of interest under the loan for any violation of paragraph (1) or (2) of Code Section 7-6A-3, any violation of Code Section 7-6A-4, or any violation of Code Section 7-6A-5;
- (3) Punitive damages subject to Code Section 51-12-5.1; and
- (4) Costs and reasonable attorneys’ fees.

(b) A borrower may be granted injunctive, declaratory, and such other equitable relief as the court deems appropriate in an action to enforce compliance with this chapter including, but not limited to, the following:

- (1) Notwithstanding any other provision of law, a court shall have the discretion not to require a borrower of a high-cost home loan seeking injunctive or other equitable relief under the provisions of this chapter to make a tender upon a showing that the borrower has a reasonable likelihood of being successful on the merits. When tender is not required by the court, upon application to the court by the creditor, the court shall require the borrower to pay into the registry of the court all regularly scheduled home loan payments including property taxes and homeowners hazard insurance premiums if required by escrow agreement which are the responsibility of the borrower payable to the creditor or servicer under the terms of the home loan agreement which become due after the filing of the legal action, said home loan payments to be paid as such become due, and such other expenses provided under the home loan agreement as the court may deem just, provided that regularly scheduled payments shall not include any payments allegedly due under any acceleration provision of the home loan. If the creditor or servicer and the borrower disagree as to the amount of the home loan payments due, either or both of them may submit to the court any written home loan agreement for the purpose of establishing the amount of home loan payments to be paid into the registry of the court;
- (2) If the borrower should fail to make any regularly scheduled payment under a high-cost home loan as it becomes due after the filing

of this action, upon application to the court by the creditor or servicer, the court may issue an order denying the borrower's petition for injunctive or other equitable relief, and vacating any decree for injunctive or equitable relief previously entered by the court; and

(3) The court shall order the clerk of the court to pay to the creditor or any person the creditor may designate the payments claimed under the high-cost home loan agreement paid into the registry of the court as said payments are made; provided, however, that, if the borrower claims that he or she is entitled to all or any part of the funds and such claim is an issue of controversy in the litigation, the court shall order the clerk to pay to the creditor or any person the creditor may designate without delay only that portion of the funds to which the borrower has made no claim in the proceedings or may make such other order as is appropriate under the circumstances. That part of the funds which is a matter of controversy in the litigation shall remain in the registry of the court until a determination of the issues by the trial court. If either party appeals the decision of the trial court, that part of the funds equal to any sums found by the trial court to be due from the creditor or servicer to the borrower shall remain in the registry of the court until a final determination of the issues. The court shall order the clerk to pay to the creditor or any person the creditor may designate without delay the remaining funds in court and all payments of future home loan payments made into court pursuant to paragraph (1) of this subsection unless the borrower can show good cause that some or all of such payments should remain in court pending a final determination of the issues.

(c) The remedies provided in this chapter shall be cumulative.

(d) Any violation of this chapter may be enforced pursuant to Code Section 9-11-23.

(e) The right of rescission granted and defined under 15 U.S.C. Section 1601, et seq., and a right of rescission for any violation of paragraph (1) or (2) of Code Section 7-6A-3, any violation of Code Section 7-6A-4, or any violation of Code Section 7-6A-5 shall be available to a borrower of a high-cost home loan at any time during the term of the loan not to exceed a period of five years after the consummation of the loan.

(f) The brokering of a home loan by a broker registered or licensed or required to be registered or licensed as a broker under the laws of this state or any other jurisdiction that violates the provisions of this chapter shall constitute a violation of such provisions.

(g) Without regard to whether a borrower is acting individually or on behalf of others similarly situated, any provision of a home loan agreement that allows a party to require a borrower to assert any claim or defense in a forum that is less convenient, more costly, or more dilatory for the resolution of a dispute than a judicial forum established in this state where

the borrower may otherwise properly bring the claim or defense or limits in any way any claim or defense the borrower may have is unconscionable and void.

(h) An action under this chapter may be brought within five years after the date of the first scheduled payment by the borrower under the home loan.

(i) The remedies provided in this chapter are not intended to be the exclusive remedies available to a borrower nor must the borrower exhaust any administrative remedies provided under this chapter or any other applicable law before proceeding under this Code section. (Code 1981, § 7-6A-7, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1.)

**The 2003 amendment**, effective March 7, 2003, in subsection (a), substituted “creditor” for “person” at the beginning and substituted “attorneys’ fees” for “attorney fees” at the end of paragraph (a)(4); in subsection (b), substituted “high-cost home” for “covered home” in the middle of the first sentence of paragraph (b)(1), inserted “under a high-cost home loan” near the beginning of paragraph (b)(2), and inserted “high-cost” near the middle of the

first sentence of paragraph (b)(3); inserted “by a broker registered or licensed or required to be registered or licensed as a broker under the laws of this state or any other jurisdiction” in the middle of subsection (f); and, in subsection (h), deleted “four years of the date of the last payment made or” following “within” and deleted “, whichever is earlier,” following “scheduled payment” near the end.

## **7-6A-8. Enforcement of chapter; penalties for violations.**

(a) The Attorney General, the district attorneys of this state, and the commissioner of banking and finance shall have jurisdiction to enforce this chapter through their general regulatory powers and through civil process. The Commissioner of Insurance shall have like authority to enforce paragraph (1) of Code Section 7-6A-3.

(b) Any person, including members, officers, and directors of a creditor, who knowingly violates this chapter is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$1,000.00 for each violation or to imprisonment not exceeding six months, or both. (Code 1981, § 7-6A-8, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1.)

**Editor’s notes.** — Ga. L. 2003, p. 1, § 1, effective March 7, 2003, reenacted this Code section without change.

## **OPINIONS OF THE ATTORNEY GENERAL**

**Offenses arising under O.C.G.A. ch. 7-6A** and designated as misdemeanors under O.C.G.A. § 7-6A-8 require fingerprinting. 2002 Op. Att’y Gen. No. 2002-7.



**7-6A-9. Terms of insurer providing insurance through financed premiums.**

A creditor or servicer or an insurer providing insurance through premiums financed by a creditor of a home loan who, when acting in good faith, fails to comply with the provisions of this chapter will not be deemed to have violated this chapter if the creditor or servicer or insurer providing insurance through premiums financed by a creditor establishes that either:

(1) Within 90 days of the loan closing and prior to receiving any notice from the borrower of the compliance failure, (A) the creditor or servicer has offered appropriate restitution to the borrower and appropriate adjustments are made to the loan or (B) to correct a compliance failure of paragraph (1) of Code Section 7-6A-3, an insurer providing insurance through premiums financed by a creditor may provide appropriate restitution to the borrower by returning premiums paid plus interest charged on the premiums to the borrower upon receipt of notice of the compliance failure; or

(2) Within 90 days of discovering a compliance failure and prior to receiving any notice of the compliance failure and the compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, the borrower is notified of the compliance failure, appropriate restitution is offered to the borrower, and appropriate adjustments are made to the loan. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this chapter is not a bona fide error. (Code 1981, § 7-6A-9, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1.)

**Editor's notes.** — Ga. L. 2003, p. 1, § 1, effective March 7, 2003, reenacted this Code section without change.

**7-6A-10. Severability of chapter.**

The provisions of this chapter shall be severable and, if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this chapter shall not be affected thereby. If any provision of this chapter is declared to be inapplicable to any category of persons or any specific category, type, or kind of loan or portions thereof, the provisions of this chapter shall nonetheless continue to apply with respect to all other persons and all other loans or portions thereof. (Code 1981, § 7-6A-10, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1.)

**Editor's notes.** — Ga. L. 2003, p. 1, § 1, effective March 7, 2003, reenacted this Code section without change.

#### **7-6A-11. Municipality or county not able to regulate terms of home loans.**

No municipality or county shall enact any ordinance or law that regulates the terms of home loans or that makes the eligibility of any person or entity to do business with the municipality or county dependent upon the terms of home loans originated or serviced by such person or entity. (Code 1981, § 7-6A-11, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1.)

**Editor's notes.** — Ga. L. 2003, p. 1, § 1, effective March 7, 2003, reenacted this Code section without change.

#### **7-6A-12. Application; preemption by federal law.**

The provisions of this chapter shall not apply to any bank, trust company, savings and loan, savings bank, credit union, or subsidiary thereof, respectively, that is chartered under the laws of this state or any other state only to the extent federal law precludes or preempts or has been determined to preclude or preempt the application of the provisions of this chapter to any federally chartered bank, trust company, savings and loan, savings bank, or credit union, respectively, and such federal preclusion or preemption shall apply only to the same type of state chartered entity as the federally chartered entity affected; provided, however, the provisions of this chapter, including subsection (f) of Code Section 7-6A-7, shall be applicable to an independent mortgage broker for any loan originated or brokered by the broker that is initially funded by any state or federally chartered bank, trust company, savings and loan, savings bank, or credit union. (Code 1981, § 7-6A-12, enacted by Ga. L. 2003, p. 1, § 1.)

**Editor's notes.** — This Code section became effective March 7, 2003.

#### **7-6A-13. Promulgation of rules and regulations; creditor's good faith reliance on guidance from department constituting prima facie evidence of compliance.**

Without limitations on the power conferred by Chapter 1 of this title, the Department of Banking and Finance shall have the authority to promulgate rules and regulations not inconsistent with law for the enforcement of this chapter to effectuate the purposes of this chapter and to clarify the meaning of terms. In complying with this chapter, a creditor's good faith reliance on any formal or informal written guidance of the Department of Banking and Finance previously made available to the general public shall constitute prima-facie evidence of compliance with this chapter. The provisions of this

Code section shall apply even if, following the reliance, such guidance is amended, rescinded, or determined by any judicial or other authority to be invalid. (Code 1981, § 7-6A-13, enacted by Ga. L. 2003, p. 1, § 1.)

**Editor's notes.** — This Code section became effective March 7, 2003.



CHAPTER 7

LOAN BROKERS

Sec.		Sec.	
7-7-1.	Definitions.	7-7-4.	Borrower's remedies for violation of chapter.
7-7-2.	Prohibited practices by loan brokers.	7-7-5.	Operation of chapter not limited by contract or agreement.
7-7-3.	Liability of principals.	7-7-6.	Penalties.

7-7-1. Definitions.

As used in this chapter, the term:

(1) "Advance fee" means any consideration which is assessed or collected, prior to the closing of a loan, by a loan broker.

(2) "Borrower" means a person obtaining or desiring to obtain a loan of money, a credit card, or a line of credit.

(3) "Loan broker" means any person, firm, or corporation who does not operate or maintain an office that is open regularly to the public for the transaction of business and where potential borrowers actually visit to transact, discuss, or negotiate potential loans and:

(A) For or in expectation of consideration, arranges or attempts to arrange or offers to fund a loan of money, a credit card, or a line of credit;

(B) For or in expectation of consideration, assists or advises a borrower in obtaining or attempting to obtain a loan of money, a credit card, a line of credit, or related guarantee, enhancement, or collateral of any kind or nature;

(C) Acts for or on behalf of a loan broker for the purpose of soliciting borrowers; or

(D) Holds himself out as a loan broker.

"Loan broker" does not include any regulated lender or any third party soliciting borrowers for a regulated lender pursuant to a written contract with the regulated lender or any mortgage banker or mortgage broker approved by a regulated lender or the federal Department of Housing and Urban Development, the Veterans' Administration, the Federal National Mortgage Corporation, or the Federal Home Loan Mortgage Corporation.

(4) "Mortgage" means any indebtedness secured by a mortgage, deed of trust, security deed, or other lien on real property.

(5) "Mortgage banker" means any person who in the regular course of business:

- (A) Holds himself out as being able to make mortgage loans;
- (B) Holds himself out as being able to service mortgage loans; or
- (C) Holds himself out as being able to buy or sell mortgage loans.

(6) "Mortgage broker" means any person who in the regular course of business for compensation or gain or in the expectation of compensation or gain holds himself out as being able to assist a person in obtaining a mortgage loan.

(7) "Principal" means any officer, director, partner, joint venturer, branch manager, or other person with similar managerial or supervisory responsibilities for a loan broker.

(8) "Regulated lender" means any person, firm, corporation, or subsidiary thereof that is licensed by and subject to regulation or supervision of any agency of the United States or this state and is acting within the scope of the license. (Code 1981, § 7-7-1, enacted by Ga. L. 1992, p. 1123, § 1.)

**Code Commission notes.** — Pursuant to substituted for a semicolon at the end of Code Section 28-9-5, in 1992, a period was paragraph (4).

## **7-7-2. Prohibited practices by loan brokers.**

No loan broker shall:

(1) Engage in unfair or deceptive acts or practices that are declared to be unlawful by Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975";

(2) Assess, collect, or solicit an advance fee from a borrower to provide services as a loan broker; provided, however, that nothing contained in this paragraph shall preclude a loan broker from soliciting a potential borrower to pay for or preclude a potential borrower from paying for actual services necessary to apply for a loan, including but not limited to a credit check or an appraisal of security where such payment is made by check or money order payable to a party independent of the loan broker;

(3) Make or use any false or misleading representations or omit any material fact in the offer or sale of the services of a loan broker or engage, directly or indirectly, in any act that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a loan broker, notwithstanding the absence of reliance by the buyer;

(4) Make or use any false or deceptive representation in its business dealings or to the department or conceal a material fact from the department; or

(5) Offer the services of a loan broker by making, publishing, disseminating, circulating, or placing before the public within this state an advertisement in a newspaper or other publication or an advertisement in the form of a book, notice, handbill, poster, sign, billboard, bill, circular, pamphlet, letter, photograph, or motion picture or an advertisement circulated by radio, loud-speaker, telephone, television, telegraph, or in any other way, where said offer or advertisement does not disclose the name, business address, and telephone number of the loan broker. For purposes of this Code section, the loan broker shall disclose the actual address and telephone number of the business of the loan broker in addition to the address and telephone number of any forwarding service that the loan broker may use. (Code 1981, § 7-7-2, enacted by Ga. L. 1992, p. 1123, § 1.)

### **7-7-3. Liability of principals.**

Each principal of a loan broker may be sanctioned for the actions of the loan broker, including its agents or employees, in the course of business of the loan broker. (Code 1981, § 7-7-3, enacted by Ga. L. 1992, p. 1123, § 1.)

### **7-7-4. Borrower's remedies for violation of chapter.**

(a) Any borrower injured by a violation of this chapter may bring civil action in a court of competent jurisdiction for recovery of damages. Judgment shall be entered for actual damages and in no case shall be less than the amount paid by the borrower to the loan broker, plus reasonable attorney's fees and costs. An award may also be entered for punitive damages.

(b) Any borrower injured by a violation of this chapter may bring an action against the surety bond or trust account, if any, of the loan broker.

(c) The remedies provided under this chapter are in addition to any other procedures or remedies for any violation or conduct provided for in any other law. (Code 1981, § 7-7-4, enacted by Ga. L. 1992, p. 1123, § 1.)

### **7-7-5. Operation of chapter not limitable by contract or agreement.**

A loan broker may not by contract, agreement, or otherwise limit the operation of this chapter, notwithstanding any other provision of law. (Code 1981, § 7-7-5, enacted by Ga. L. 1992, p. 1123, § 1.)



**7-7-6. Penalties.**

Any person who violates any provision of this chapter shall be guilty of a felony and upon conviction shall be subject to a fine not to exceed \$5,000.00 or by imprisonment for not less than one nor more than five years, or both. (Code 1981, § 7-7-6, enacted by Ga. L. 1992, p. 1123, § 1.)

CHAPTER 8

SAFE USE OF REMOTE SERVICE TERMINALS

Sec.		Sec.	
7-8-1.	Definitions.	7-8-5.	Terminals to which chapter not applicable.
7-8-2.	Procedures for evaluating safety of remote service terminals.	7-8-6.	Rules and regulations.
7-8-3.	Date of compliance; provision of adequate lighting.	7-8-7.	Inapplicability to persons or entities that are not a financial depository institution or operator.
7-8-4.	Notices to customers of basic safety precautions.	7-8-8.	Preemption.

**Law reviews.** — Introduction to the Symposium: Consumer Financial Services Law in the 1990s, see 9 Ga. St. U.L. Rev. 737 (1993). Electronic Money in the 1990s: A Net Benefit or Merely a Trade-Off?, see 9 Ga. St. U.L. Rev. 747 (1993). Consumer Pricing for ATM Services: Antitrust Constraints and Legislative Alternatives, see 9 Ga. St. U.L. Rev. 839 (1993).

7-8-1. Definitions.

As used in this chapter, the term:

(1) “Access area” means any paved walkway or sidewalk which is within 50 feet of any remote service terminal. The term does not include any street or highway open to the use of the public or any adjacent sidewalk.

(2) “Access device” shall have the same meaning as set forth in Federal Reserve Board Regulation E, 12 C.F.R. Part 205, promulgated pursuant to the federal Electronic Fund Transfer Act, 15 U.S.C. Section 1601, et seq.

(3) “Candlefoot power” means the light intensity of candles on a horizontal plane at 36 inches above ground level and five feet in front of the area to be measured.

(4) “Control” of an access area or defined parking area means to have the present authority to determine how, when, and by whom such access area or defined parking area is to be used, maintained, lighted, and landscaped.

(5) “Customer” means a natural person to whom an access device has been issued for personal, family, or household use.

(6) “Defined parking area” means that portion of any parking area open for customer parking which is:

(A) Contiguous to an access area with respect to a remote service terminal;

(B) Regularly, principally, and lawfully used for parking by users of the remote service terminal while conducting remote service terminal transactions during the hours of darkness; and

(C) Owned or leased by the operator of the remote service terminal or owned or controlled by the party leasing the remote service terminal site to the operator.

The term does not include any parking area which is not open or regularly used for parking by users of the remote service terminal who are conducting remote service terminal transactions during the hours of darkness. A parking area is not open if it is physically closed to access or if conspicuous signs indicate that it is closed. If a multiple-level parking area satisfies the conditions of this paragraph and would therefore otherwise be a defined parking area, only the single parking level deemed by the operator of the remote service terminal to be the most directly accessible to the users of the remote service terminal shall be a defined parking area.

(7) "Financial institution" means such an institution as defined in Code Section 7-1-4.

(8) "Hours of darkness" means the period that commences 30 minutes after sunset and ends 30 minutes before sunrise.

(9) "Operator" means any bank, savings association, credit union, savings bank, or other business entity or any person who operates a remote service terminal, but does not include any person or entity whose primary function is to provide for the exchange, transfer, or dissemination of electronic fund transfer data.

(10) "Owner of an automated teller machine" means the person having the right to determine the financial institutions which will be permitted to use, or participate in the usage of, the automated teller machine but does not include any person or entity whose primary function is to provide for the exchange, transfer, or dissemination of electronic fund transfer data.

(11) "Public road" means any public right of way, including, but not limited to, structures, sidewalks, facilities, and appurtenances incidental thereto.

(12) "Remote service terminal" means any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit, or convenience account. The term does not include devices used solely to facilitate check guarantees or check authorizations or which are used in connection with the acceptance or dispensing of cash on a person-to-person basis, such as by store cashier. (Code 1981, § 7-8-1, enacted by Ga. L. 1993, p. 917, § 12; Ga. L. 1994, p. 97, § 7.)



**7-8-2. Procedures for evaluating safety of remote service terminals.**

(a) On or before July 1, 1994, with respect to all existing installed remote service terminals in this state, and any remote service terminals installed after July 1, 1993, the operator shall adopt procedures for evaluating the safety of the remote service terminals. These procedures shall include a consideration of the following:

(1) The extent to which the lighting for the remote service terminal complies or will comply with applicable standards;

(2) The presence of landscaping, vegetation, or other obstructions in the area of the remote service terminal, the access area, and the defined parking area; and

(3) The incidence of crimes of violence in the immediate neighborhood of the remote service terminal as reflected in the records of the local law enforcement agency and of which the operator has actual knowledge.

(b) It is not the intent of the General Assembly in enacting this chapter to impose a duty to relocate or modify remote service terminals upon the occurrence of any particular events or circumstances, but rather to establish a standard of good faith for the evaluation of all remote service terminals as provided in this chapter. A violation of the provisions of this chapter or any regulation made pursuant thereto will not constitute negligence per se. (Code 1981, § 7-8-2, enacted by Ga. L. 1993, p. 917, § 12.)

**7-8-3. Date of compliance; provision of adequate lighting.**

(a) Each operator of a remote service terminal installed on or after July 1, 1993, shall comply with the provisions of this chapter commencing on the date the remote service terminal is installed. Compliance with the provisions of this chapter by operators as to remote service terminals existing as of July 1, 1993, shall be optional until July 1, 1994, and mandatory thereafter. This Code section shall apply to an operator of a remote service terminal only to the extent that the operator controls the access area or defined parking area to be lighted.

(b) If an access area or defined parking area is not controlled by the operator of the remote service terminal, and if the person who leased the remote service terminal site to the operator controls the access area or defined parking area, the person who controls the access area or defined parking area shall comply with the provisions of this chapter as to any remote service terminals installed on or after July 1, 1994, commencing on the date the remote service terminal is installed and as to any remote service terminal existing as of July 1, 1993, commencing no later than on July 1, 1994.

(c) The operator, owner, or other person responsible for the remote service terminal shall provide lighting during the hours of darkness with respect to an open and operating remote service terminal and any defined parking area, access area, and the exterior of an enclosed remote service terminal installation according to the following standards:

(1) There shall be a minimum of ten candlefoot power at the face of the remote service terminal and extending in an unobstructed direction outward five feet;

(2) There shall be a minimum of two candlefoot power within 50 feet from all unobstructed directions from the face of the remote service terminal. In the event the remote service terminal is located within ten feet of the corner of the building and the remote service terminal is generally accessible from the adjacent side, there shall be a minimum of two candlefoot power along the first 40 unobstructed feet of the adjacent side of the building; and

(3) There shall be a minimum of two candlefoot power in that portion of the defined parking area within 60 feet of the remote service terminal. (Code 1981, § 7-8-3, enacted by Ga. L. 1993, p. 917, § 12.)

#### **7-8-4. Notices to customers of basic safety precautions.**

Customers receiving access devices shall be furnished by the respective issuers thereof with notices of basic safety precautions which customers should employ while using a remote service terminal. This information shall be furnished by personally delivering or mailing the information to each customer whose mailing address as to the account to which the access device relates is in this state. This information shall be furnished with respect to access devices issued on or after July 1, 1994, at or before the time the customer is furnished with his or her access device. With respect to a customer to whom an access device has been issued prior to July 1, 1993, the information shall be delivered on or before July 1, 1994. Only one notice need be furnished per household, and if access devices are furnished to more than one customer for a single account or set of accounts or on the basis of a single application or other request for access devices, only a single notice need be furnished in satisfaction of the notification responsibilities as to those customers. The information may be included with other disclosures related to the access device furnished to the customer, such as with any initial or periodic disclosure statement furnished pursuant to the federal Electronic Fund Transfer Act. (Code 1981, § 7-8-4, enacted by Ga. L. 1993, p. 917, § 12.)

#### **7-8-5. Terminals to which chapter not applicable.**

The provisions of this chapter shall not apply to any remote service terminal which is located:

(1) Inside a building, unless it is a freestanding installation which exists for the sole purpose of providing an enclosure for the remote service terminal;

(2) Inside a building, except to the extent a transaction can be conducted from outside the building; or

(3) In any area, including any access area, building, enclosed space, or parking area, which is not controlled by the operator. (Code 1981, § 7-8-5, enacted by Ga. L. 1993, p. 917, § 12.)

#### **7-8-6. Rules and regulations.**

The commissioner of the Department of Banking and Finance is empowered to enforce the provisions of this chapter and is empowered to make all necessary rules and regulations for the purpose of carrying out the purposes of this chapter. (Code 1981, § 7-8-6, enacted by Ga. L. 1993, p. 917, § 12.)

#### **7-8-7. Inapplicability to persons or entities that are not a financial depository institution or operator.**

The provisions of this chapter shall not be construed to create any duty, responsibility, or obligation for any person or entity whose primary function is to provide for the exchange, transfer, or dissemination of electronic fund transfer data and is not otherwise a financial depository institution or an operator, as defined in this chapter, and such person or entity shall have no liability of any nature to any customer or user of a remote service terminal and shall not be named in any action by a customer or user of a remote service terminal for any claim concerning any provision of this chapter or relating to the use or attempted use of a remote service terminal. (Code 1981, § 7-8-7, enacted by Ga. L. 1993, p. 917, § 12.)

#### **7-8-8. Preemption.**

This chapter supersedes and preempts all rules, regulations, codes, statutes, or ordinances of all cities, counties, consolidated cities and counties, municipalities, and local agencies regarding customer safety at remote service terminals. (Code 1981, § 7-8-8, enacted by Ga. L. 1993, p. 917, § 12.)





## TITLE 8

### BUILDINGS AND HOUSING

- Chap. 1. General Provisions, Reserved.
2. Standards and Requirements for Construction, Alteration, Etc., of Buildings and Other Structures, 8-2-1 through 8-2-222.
  3. Housing Generally, 8-3-1 through 8-3-332.
  4. Clearance and Rehabilitation of Blighted Areas, 8-4-1 through 8-4-12.
  5. Art in State Buildings, 8-5-1 through 8-5-9.
  6. Construction Activity Prohibition on Abandoned Landfills, 8-6-1 through 8-6-4.
  7. Pesticides in Public Buildings, 8-7-1.

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**Cross references.** — Georgia Building Authority (Markets), § 2-10-1 et seq. Georgia Education Authority (Schools), § 20-2-550 et seq. Georgia Education Authority (University), § 20-3-150 et seq. Private Colleges and

Universities Facilities Authority, § 20-3-200 et seq. Georgia Building Authority (Hospital), § 31-7-20 et seq. Georgia Building Authority (Penal), Ch. 3, T. 42. Georgia Building Authority, Ch. 9, T. 50.

**CHAPTER 1**

**GENERAL PROVISIONS**

**Reserved**



CHAPTER 2

STANDARDS AND REQUIREMENTS FOR  
CONSTRUCTION, ALTERATION, ETC.,  
OF BUILDINGS AND OTHER  
STRUCTURES

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8-2-3.	Requirements for toilets, shower heads, and faucets.	8-2-29.	Powers of department generally.
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8-2-23.	Amendment and revision of codes generally.	8-2-36.	Definitions.
8-2-24.	Appointment of advisory committee; reimbursement of members for expenses; use of subcommittees; submittal of proposed amendments, modifications, and new provisions to committee; meeting times of committee.	8-2-37.	Required compliance with this part.
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8-2-25.	State-wide application of minimum standard codes; codes requiring adoption by municipality or county; adoption of more stringent requirements by local governments; adoption of standards for which state code does not exist.	8-2-39.	Discovery of additional defects after original notice given.
		8-2-40.	Effect of claimant's acceptance of settlement; subrogation of insurance.
		8-2-41.	Notice to consumer prior to beginning initial construction work.
		8-2-42.	Bribery of property or association managers prohibited; penalty right and responsibilities of association for remedying construction defects; procedure.

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- 8-2-50. Providing of fire escapes by building owners; requirements regarding location and construction of fire escapes and exit doors.
- 8-2-51. Inspection of buildings; notifying owners regarding noncompliance with requirements relating to fire escapes.
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## BOILERS, PRESSURE VESSELS, AND WATER HEATERS

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## GLASS INSTALLATIONS

- 8-2-90. Definitions.
- 8-2-91. Products used in hazardous locations and containing glass or glazing product other than safety glazing material.
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- 8-2-94. Administration and enforcement of part by Commissioner of Labor; promulgation of rules and regulations by Commissioner.
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- 8-2-100. Definitions.

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8-2-101. Registration; maintenance; alterations.
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- 8-2-104. Employment of inspectors; inspection fees; inspection rules and regulations.
- 8-2-105. Local government regulation and enforcement.
- 8-2-106. Reporting of accidents; removal from service of equipment involved in accident.
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- 8-2-110. Legislative findings and purpose.
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- 8-2-114. Approval by commissioner of industrialized building meeting standards prescribed by other states; delegation of inspection authority.
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	ufacturers, installers, or dealers of industrialized buildings; damages, costs, and attorney's fees.
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8-2-135.1.	(Effective October 1, 2004) Manufacturing inspection fee; reinspection; monitoring inspection fee.
8-2-136.	(For effective date, see note) Records and reports of manufactured home manufacturers, retailers, retail brokers, and installers; inspection of such books and records.
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Sec.	
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8-2-160.	Definitions.
8-2-160.1.	(Effective January 1, 2005) Co-operative agreements.
8-2-161.	(For effective date, see note) Duty of Commissioner to establish rules and procedures for licensure and installation.
8-2-162.	(For effective date, see note) Administration of part by Commissioner; investigation of consumer complaints.
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Sec.		Sec.	
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		8-2-204.	Alteration or repair without total compliance with new construction requirements.
		8-2-205.	Identification and correction of certain conditions or defects.
		8-2-206.	Consideration of compliance alternatives.
		8-2-207.	Compliance alternatives for inadequate number of exits.
		8-2-208.	Compliance alternatives for excessive travel distances to approved exit.
		8-2-209.	Compliance alternatives for unenclosed or improperly enclosed exit stairways or vertical shafts.
		8-2-210.	Compliance alternatives for inadequate fire partitions or walls.
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		8-2-212.	Filing of approved compliance alternatives.
		8-2-213.	Final review of projects; agreement of local authorities.
		8-2-214.	Additions.
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		8-2-216.	Continuation of legal use and occupancy.
		8-2-217.	Total change in use or occupancy.

### Subpart 3

#### Destruction of Manufactured Homes

8-2-187.	Certificate of destruction and requirements for issuance.
8-2-188.	Retention of titles by commissioner of motor vehicle safety.

Sec.		Sec.	
8-2-218.	Change of portion of building to new use or occupancy.	8-2-221.	Appeals of rulings or decisions.
8-2-219.	Changes which increase floor loading.	8-2-222.	Immunity of state and local entities; liability of property owner or user.
8-2-220.	Rules and regulations.		

**Cross references.** — Standards and requirements for construction of public school buildings, § 20-2-16. Promulgation of rules and regulations by Safety Fire Commissioner regarding fire hazards in hotels, apartment houses, places of public assembly, etc., § 25-2-19. Fire inspections of buildings, § 25-2-22 et seq. Access to and use of public buildings and accommodations by physically handicapped persons, Ch. 3, T. 30 and Ch. 4, T. 30. Standards and requirements governing installation of sewage management systems, § 31-3-5.1. General duty of owner of

public building or place of public assembly to construct, repair, and maintain such facility so as to render it reasonably safe, § 34-2-10. Prohibition against use of construction plans and specifications not prepared by or under supervision of registered professional engineer or architect, § 43-15-24. Sanitary regulations for hotels and inns, § 43-21-30 et seq.

**Law reviews.** — For survey article on contracts — legislation, see 34 Mercer L. Rev. 71 (1982).

RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Buildings, § 19.  
**C.J.S.** — 39A C.J.S. (Rev.), Health and Environment, §§ 51 et seq., 71.  
**ALR.** — Liability of builder or real estate

developer who sells new dwelling for failure to provide potable water, 16 ALR4th 1246.  
Validity, construction, and application of the Uniform Fire Code, 46 ALR5th 479.

ARTICLE 1  
BUILDINGS GENERALLY

RESEARCH REFERENCES

**ALR.** — Liability of governmental entity to builder or developer for negligent issuance of building permit subsequently suspended or revoked, 41 ALR4th 99.

PART 1  
GENERAL PROVISIONS

8-2-1. Legislative findings and intent.

The General Assembly finds that an adequate supply of clean drinking water is a precious and essential resource upon which life depends. The General Assembly further finds that the average annual per capita consumption of potable water due to indoor water-using activities in the United States exceeds 18,000 gallons and that the demand for clean water supplies continues to increase despite the limitations of availability and affordability

of such supplies. The General Assembly further finds that technology is available to improve the efficiency of plumbing products. (Code 1981, § 8-2-1, enacted by Ga. L. 1990, p. 1212, § 1.)

**Editor's notes.** — Ga. L. 1990, p. 1212, § 1, designated the former provisions of this Code section as Code Section 8-2-3.

### **8-2-2. Purpose of part.**

The purposes of this part are as follows:

- (1) To promote greater efficiency in residential and commercial water use and preserve the natural resources of this state;
- (2) To reduce consumer water and energy costs by reducing indoor water use, reducing the need for new water supplies and treatment facilities, lowering operation and maintenance costs for water and sewer utilities, and reducing the amount of energy used to heat, treat, and transport water; and
- (3) To generate consumer awareness of the need to save water and of the savings that can result from the use of efficient plumbing products. (Code 1981, § 8-2-2, enacted by Ga. L. 1990, p. 1212, § 1.)

### **8-2-3. Requirements for toilets, shower heads, and faucets.**

(a) As used in this Code section, the term:

- (1) "Commercial" means any type of building other than residential.
- (2) "Construction" means the erection of a new building or the alteration of an existing building in connection with its repair or renovation or in connection with making an addition to an existing building and shall include the replacement of a malfunctioning, unserviceable, or obsolete faucet, showerhead, toilet, or urinal in an existing building.
- (3) "Residential" means any building or unit of a building intended for occupancy as a dwelling but shall not include a hotel or motel.

(b) After April 1, 1992, there shall not be initiated within this state the construction of any residential building of any type which:

- (1) Employs a gravity tank-type, flushometer-valve, or flushometer-tank toilet that uses more than an average of 1.6 gallons of water per flush; provided, however, this paragraph shall not be applicable to one-piece toilets until July 1, 1992;
- (2) Employs a shower head that allows a flow of more than an average of 2.5 gallons of water per minute at 60 pounds per square inch of pressure;



(3) Employs a urinal that uses more than an average of 1.0 gallon of water per flush;

(4) Employs a lavatory faucet or lavatory replacement aerator that allows a flow of more than 2.0 gallons of water per minute; or

(5) Employs a kitchen faucet or kitchen replacement aerator that allows a flow of more than 2.5 gallons of water per minute.

(c) On and after July 1, 1992, there shall not be initiated within this state the construction of any commercial building of any type which does not meet the requirements of paragraphs (1) through (5) of subsection (b) of this Code section.

(d) The requirements of subsection (b) of this Code section shall apply to any residential construction initiated after April 1, 1992, and to any commercial construction initiated after July 1, 1992, which involves the repair or renovation of or addition to any existing building when such repair or renovation of or addition to such existing building includes the replacement of toilets or showers or both.

(e) Counties and municipalities are authorized and directed to provide by ordinance for an exemption to the requirements of subsections (b), (c), and (d) of this Code section, relative to new construction and to the repair or renovation of an existing building, under the following conditions:

(1) When the repair or renovation of the existing building does not include the replacement of the plumbing or sewage system servicing toilets, faucets, or shower heads within such existing building;

(2) When such plumbing or sewage system within such existing building, because of its capacity, design, or installation, would not function properly if the toilets, faucets, or shower heads required by this part were installed;

(3) When such system is a well or gravity flow from a spring and is owned privately by an individual for use in such individual's personal residence; or

(4) When units to be installed are:

(A) Specifically designed for use by persons with disabilities;

(B) Specifically designed to withstand unusual abuse or installation in a penal institution; or

(C) Toilets for juveniles.

(f) The ordinances adopted by counties and municipalities pursuant to subsection (e) of this Code section shall provide procedures and requirements to apply for the exemption authorized by said subsection.

(g) This Code section shall not apply to any construction of a residential building the contract for which was entered into prior to April 1, 1992, and

shall not apply to any construction of a commercial building the contract for which was entered into prior to July 1, 1992.

(h) Any person who installs any toilet, faucet, urinal, or shower head in violation of this Code section shall be guilty of a misdemeanor.

(i) Before April 1, 1992, a city, county, or authority shall adopt and enforce the provisions of this Code section in order to be eligible to receive any of the following grants, loans, or permits:

(1) A water or waste-water facilities grant administered by the Department of Natural Resources or the Department of Community Affairs; or

(2) A water or waste-water facilities loan administered by the Georgia Environmental Facilities Authority.

(j) For purposes of this part, after April 1, 1992, the sale of a gravity tank-type, flushometer-valve, or flushometer-tank toilet that uses more than an average of 1.6 gallons of water per flush shall be prohibited.

(k) The provisions of this Code section shall not be construed to prohibit counties or municipalities from adopting and enforcing local ordinances which provide requirements which are more stringent than the requirements of this Code section. (Ga. L. 1978, p. 914, §§ 1, 2; Ga. L. 1979, p. 776, § 1; Ga. L. 1990, p. 1212, § 1; Ga. L. 1991, p. 987, §§ 1, 2; Ga. L. 1995, p. 1302, § 15.)

#### OPINIONS OF THE ATTORNEY GENERAL

**Standards applicable to public buildings.** — Both the shower head water flow standard found in Ga. L. 1978, p. 914 (see O.C.G.A. § 8-2-3) and the standard found in the Georgia

State Energy Code for Buildings are applicable to public buildings. 1980 Op. Att'y Gen. No. 80-132.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Buildings, § 32.

**ALR.** — Validity of statutes, ordinances,

and regulations requiring the installation or maintenance of various bathroom facilities in dwelling units, 79 ALR3d 716.

### PART 2

#### STATE BUILDING, PLUMBING, AND ELECTRICAL CODES

**Cross references.** — Authority of counties to adopt, amend, etc., electrical, plumbing, etc., codes, Ch. 13, T. 36. Local Government Code Enforcement Boards, § 36-74 et seq.

**Administrative rules and regulations.** — Georgia State Minimum Standards Code, Official Compilation of Rules and Regulations of State of Georgia, Department of

Community Affairs, Chapter 110-11-1. The Georgia State Energy Code for Buildings, Official Compilation of Rules and Regulations of State of Georgia, Rules of Georgia State Building Administrative Board, Ch. 90-3-1. Licensing of electrical contractors, master plumbers, journeyman plumbers, and conditioned air contractors, Official

Compilation of Rules and Regulations of State of Georgia, Rules of State Construction Industry Licensing Board, Chapters 121-2, 121-3, and 121-4. Plumbing contractors gen-

erally, Official Compilation of Rules and Regulations of State of Georgia, Rules of Georgia State Board of Plumbing Contractors, Chapters 496-1 through 496-4.

### OPINIONS OF THE ATTORNEY GENERAL

**Applicability of state code to jurisdictions without local code.** — O.C.G.A. Pt. 2, Ch. 2, T. 8 does not mandate that State Construction Code be applicable to those jurisdictions which have not adopted a local code. 1982 Op. Att’y Gen. No. 82-17.

**The Plumbing Codes protect property owners** by setting the minimum acceptable standard for what is considered to be safe plumbing work. 1990 Op. Att’y Gen. No. 90-9.

**Testing of applicants for plumbing license.** — Since O.C.G.A. § 43-14-6(a)(1)

specifically requires the State Construction Industry Licensing Board, Division of Master Plumbers and Journeyman Plumbers, to examine applicants based on the “applicable state minimum standards codes” and, as of October 1, 1991, both the Georgia State Plumbing Code and the Standard Plumbing Code will be the applicable state standard codes, it would appear to be the legislative intent for prospective licensees to be tested on both codes by the division. 1990 Op. Att’y Gen. No. 90-9.

### RESEARCH REFERENCES

**ALR.** — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 ALR 834; 42 ALR 1226; 118 ALR 646.

Validity, construction, and application of regulations of business of building or construction contractors, 118 ALR 676.

### 8-2-20. Definitions.

As used in this part, the term:

- (1) “Board” means the Board of Community Affairs.
- (2) “Commissioner” means the commissioner of community affairs.
- (3) “Department” means the Department of Community Affairs.
- (4) “Exempted building” means any of the following:
  - (A) Any building whose peak design rate of energy usage for heating, cooling, ventilation, and lighting is less than one watt or 3.4 British thermal units (BTUs) per hour per square foot of floor area for all purposes;
  - (B) Any building which is neither mechanically heated nor mechanically cooled;
  - (C) Any mobile home; and
  - (D) Any building owned or leased in whole or in part by the United States.
- (5) “Exterior envelope” means those elements of a building which enclose conditioned spaces through which thermal energy may be transferred to or from the exterior.



(6) "New building" means any building on which final design is commenced after the adoption of the International Energy Conservation Code under this part.

(7) "Public building" means any building which is open to the public during normal business hours and is not an exempted building, including the following:

(A) Any building which provides facilities or shelter for public assembly or which is used for educational, office, or institutional purposes;

(B) Any inn, hotel, motel, sports arena, supermarket, transportation terminal, retail store, restaurant, or other commercial establishment which provides services or retails merchandise;

(C) Any portion of an industrial plant building used primarily as office space; and

(D) Any building owned by the state or a political subdivision or instrumentality thereof, including libraries, museums, schools, hospitals, auditoriums, sports arenas, and university buildings.

(8) "Renovated building" means either of the following:

(A) A building undergoing alteration of the exterior envelope; heating, ventilation, and air-conditioning systems; water-heating systems; or lighting systems, for which the aggregate cost of alteration exceeds 10 percent of the assessed value of the building immediately prior to such alteration; or

(B) A building undergoing alteration in the physical configuration or interior space, for which the aggregate cost of alteration exceeds one-fourth of the assessed value of the building immediately prior to such alteration.

(9)(A)(i) On and after October 1, 1991, "state minimum standard codes" means the following codes:

(I) Standard Building Code (SBCCI);

(II) National Electrical Code as published by the National Fire Protection Association;

(III) Standard Gas Code (SBCCI);

(IV) Standard Mechanical Code (SBCCI);

(V) Georgia State Plumbing Code or the Standard Plumbing Code (SBCCI);

(VI) Council of American Building Officials One- and Two-Family Dwelling Code, with the exception of Part V — Plumbing (Chapters 20-25) of said code;

(VII) Georgia State Energy Code for Buildings as adopted by the State Building Administrative Board pursuant to an Act approved April 10, 1978 (Ga. L. 1978, p. 2212), as such code exists on September 30, 1991;

(VIII) Standard Fire Prevention Code (SBCCI);

(IX) Standard Housing Code (SBCCI);

(X) Standard Amusement Device Code (SBCCI);

(XI) Excavation and Grading Code (SBCCI);

(XII) Standard Existing Buildings Code (SBCCI);

(XIII) Standard Swimming Pool Code (SBCCI); and

(XIV) Standard Unsafe Building Abatement Code (SBCCI).

(ii) The codes provided in division (i) of this subparagraph shall mean such codes as they exist on October 1, 1991, provided that the department, with the approval of the board, may adopt a subsequently published edition of any such code as provided in subsection (b) of Code Section 8-2-23; and provided, further, that any such code may hereafter be amended or revised as provided in subsection (a) of Code Section 8-2-23.

(B)(i) On or after July 1, 2004, "state minimum standard codes" means the following codes:

(I) International Building Code (ICC);

(II) National Electrical Code (NFPA);

(III) International Fuel Gas Code (ICC);

(IV) International Mechanical Code (ICC);

(V) International Plumbing Code (ICC);

(VI) International Residential Code for One- and Two-Family Dwellings (ICC);

(VII) International Energy Conservation Code (ICC);

(VIII) International Fire Code (ICC);

(IX) International Existing Building Code (ICC);

(X) International Property Maintenance Code (ICC); and

(XI) Any other codes deemed appropriate by the board for the safety and welfare of Georgia's citizens.

(ii) The codes provided in division (i) of this subparagraph shall mean such codes as they exist on July 1, 2004, provided that the

department, with the approval of the board, may adopt a subsequently published edition of any such code as provided in subsection (b) of Code Section 8-2-23; and provided, further, that any such code may hereafter be amended or revised as provided in subsection (a) of Code Section 8-2-23.

(C) References to any standard code in this part shall mean one of the standard codes listed in division (i) of subparagraph (A) or division (i) of subparagraph (B) of this paragraph.

(D) The term “state minimum standard codes” shall specifically not include the Georgia State Fire Code as adopted by the Safety Fire Commissioner pursuant to Code Section 25-2-13 nor shall any state minimum standard code be less restrictive than the Georgia State Fire Code. (Ga. L. 1978, p. 2212, § 3; Ga. L. 1980, p. 1316, § 2; Ga. L. 1989, p. 1659, § 1; Ga. L. 1990, p. 1364, § 1; Ga. L. 2004, p. 551, § 1.)

**The 2004 amendment**, effective July 1, 2004, substituted “International Energy Conservation Code” for “Georgia State Energy Code for Buildings” in paragraph (6); deleted former subparagraph (9)(A) which read: “(9)(A)(i) Prior to October 1, 1991, ‘state minimum standard codes’ means the following codes:

- ‘(I) Georgia State Housing Code;
- ‘(II) Georgia State Building Code;
- ‘(III) Georgia State Plumbing Code;

‘(IV) Georgia State Air Conditioning and Heating Code;

‘(V) Georgia State Electrical Code; and

‘(VI) Georgia State Gas Code.

‘(ii) The term ‘state minimum standard codes’ shall specifically not include the Georgia State Energy Code for Buildings.”; redesignated subdivision (9)(B)(i) as subdivision (9)(A)(i); and added subdivisions (9)(B)(i) and (9)(B)(ii).

## **8-2-21. Adoption and continuation of state minimum standard codes; enforcement of codes.**

Enforcement of the state minimum standard codes provided for in divisions (9)(A)(i) and (9)(B)(i) of Code Section 8-2-20 shall not include enforcement of appendices to such codes except when:

(1) Any provision of an appendix is specifically referenced in the code text;

(2) An appendix to a code is specifically included in an administrative ordinance adopted by a municipality or county; or

(3) An appendix to a code is specifically adopted by the department with the approval of the board. (Ga. L. 1980, p. 1316, § 3; Ga. L. 1982, p. 3, § 8; Ga. L. 1989, p. 1659, § 2; Ga. L. 2004, p. 551, § 2.)

**The 2004 amendment**, effective July 1, 2004, deleted former subsection (a) which read: “(a) The state minimum standard codes, which were prepared and adopted by the State Building Administrative Board pursuant to an Act approved April 21, 1969 (Ga.

L. 1969, p. 546), as amended, as such codes exist on June 30, 1989, are adopted and continued in their entirety by the department until October 1, 1991, at which time all of said codes shall be repealed in their entirety, except the Georgia State Plumbing



Code which will be continued as it exists on October 1, 1991, to facilitate the provisions of subdivision (9)(B)(i)(V) of Code Section 8-2-20 and the other provisions of this part. The said Georgia State Plumbing Code may be amended thereafter as provided in subsection (a) of Code Section 8-2-23.”; deleted the former subsection (b) designation; and

substituted “divisions (9)(A)(i) and (9)(B)(i)” for “division (9)(B)(i)” near the beginning.

**Editor’s notes.** — The State Building Administrative Board, referred to in this Code section, was abolished by Ga. L. 1980, p. 1316, § 14.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Buildings, § 31 et seq.

**ALR.** — Delegation of matter of building regulations to private individuals or associations, 2 ALR 882.

Liability of builder-vendor or other ven-

dor of new dwelling for loss, injury, or damage occasioned by defective condition thereof, 25 ALR3d 383.

Existence of, and relief from, nuisance created by operation of air conditioning or ventilating equipment, 79 ALR3d 320.

#### 8-2-22. Licensing of trades, professions, and businesses governed by Chapter 14 of Title 43 and rules and regulations of State Construction Industry Licensing Board.

Provisions for licensing trades, professions, and businesses covered by the provisions of this article shall be as determined by Chapter 14 of Title 43 and the rules and regulations of the State Construction Industry Licensing Board created in such chapter. (Ga. L. 1980, p. 1316, § 3; Ga. L. 1982, p. 3, § 8; Ga. L. 1989, p. 1659, § 3.)

#### OPINIONS OF THE ATTORNEY GENERAL

##### **Standards applicable to public buildings.**

— Both the shower head water flow standard found in O.C.G.A. § 8-2-1 and the standard found in the Georgia State Energy Code for

Buildings (formerly referred to in this section) are applicable to public buildings. 1980 Op. Att’y Gen. No. 80-132.

#### 8-2-23. Amendment and revision of codes generally.

(a)(1) The department, with the approval of the board, may from time to time revise and amend the state minimum standard codes either on its own motion or upon recommendation from any citizen, profession, state agency, or political subdivision of the state. Upon approval by a majority of the board, each such amendment, modification, or new provision shall be held to be in full force and effect as if it were included in the original adopted code. Prior to the adoption of any proposed amendment, modification, or new provision, the department shall conduct such public hearings as are required by Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” for the adoption of rules. Such public hearings shall be conducted at such places, on such dates, and at such times as may be determined by the department.

(2) Revisions of or amendments to the International Energy Conservation Code shall not become effective without the approval of the Division of Energy Resources of the Georgia Environmental Facilities Authority. The department shall consult with the division during the revision or amendment of such code and shall submit such revisions or amendments to the division for approval at least ten days prior to the adoption thereof.

(3) The department shall make copies of amendments to codes available to members of the general public at such price as it deems reasonable to defray the costs of publication and handling. Notice of amendments to or adoption of a new edition of any state minimum standard code which is applicable state wide shall be provided by the department to the chief elected official and the chief building enforcement official of a municipality or county and to the chief fire official of each fire department certified pursuant to Article 2 of Chapter 3 of Title 25 at least ten days prior to the effective date of such amendments.

(4) The revision or amendment of any of the state minimum standard codes shall have reasonable and substantial connection with the public health, safety, and general welfare.

(b)(1) The department, with the approval of the board, may adopt a new edition of any state minimum standard code either on its own motion or upon recommendation from any profession, state agency, or political subdivision of this state. Upon approval by a majority of the board, each new code edition shall be held to be in full force and effect as if it was the original adopted code. Prior to the adoption of any new edition of a state minimum standard code, the department shall conduct such public hearings as are required by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," for the adoption of rules. Such public hearings shall be conducted at such places, on such dates, and at such times as may be determined by the department.

(2) Notwithstanding the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," or any other provision of law, the department shall not be required to make available or to distribute any copies of a new edition of a state minimum standard code adopted by the department. (Ga. L. 1969, p. 546, § 5; Ga. L. 1978, p. 2212, §§ 4, 5; Ga. L. 1980, p. 1316, § 4; Ga. L. 1989, p. 1659, § 4; Ga. L. 1994, p. 1108, § 1; Ga. L. 2004, p. 551, § 3.)

**The 2004 amendment,** effective July 1, 2004, substituted "International Energy Conservation Code" for "Georgia State Energy Code for Buildings" near the beginning of paragraph (a)(2).

**Cross references.** — Powers and duties of Division of Energy Resources generally, § 50-23-32.

**Administrative rules and regulations.** — Georgia State Minimum Standards Code, Official Compilation of Rules and Regulations of State of Georgia, Department of Community Affairs, Chapter 110-11-1.

## OPINIONS OF THE ATTORNEY GENERAL

**Inclusion of manufacturer-developed standard in Plumbing Code.** — Under O.C.G.A. § 8-2-23, the Department of Community Affairs would be authorized, within its discretion to include in the Georgia State Plumbing Code an industry or

manufacturer-developed standard if that standard is determined by the department to have a reasonable and substantial connection with public health, safety, and general welfare. 1984 Op. Att'y Gen. No. 84-14.

**8-2-24. Appointment of advisory committee; reimbursement of members for expenses; use of subcommittees; submittal of proposed amendments, modifications, and new provisions to committee; meeting times of committee.**

(a) For the purpose of assisting the department in carrying out the provisions of Code Section 8-2-23, the commissioner shall appoint an advisory committee to be composed of 21 members as follows:

(1) The Georgia Safety Fire Commissioner or his or her designee as an ex officio member with full voting privileges;

(2) The commissioner of human resources or his or her designee as an ex officio member with full voting privileges;

(3) The commissioner of community affairs or his or her designee as an ex officio member with full voting privileges;

(4) One representative of the home-building industry;

(5) One representative of the industrialized building industry;

(6) One representative of the general contracting industry;

(7) One representative of the profession of mechanical engineering;

(8) One licensed architect;

(9) One licensed electrical engineer;

(10) One representative of the manufactured homes industry;

(11) One licensed electrical contractor;

(12) One building material dealer;

(13) One licensed plumbing contractor;

(14) One licensed conditioned-air contractor;

(15) One licensed structural engineer;

(16) Four municipal or county code enforcement officials; and

(17) Two local fire officials.

(b) All appointments to the committee shall be for a term of four years; provided, however, that the initial members appointed pursuant to para-



graphs (4), (5), (6), (7), (9), (15), (16), and (17) of subsection (a) of this Code section shall be appointed for a term to expire on the same date as the terms of other members. A member shall serve until his or her successor has been duly appointed. The commissioner shall make appointments to fill the unexpired portion of any term vacated for any reason. In making such appointments, the commissioner shall preserve the composition of the committee as required by this Code section. Any appointive member who, during his or her term, ceases to meet the qualifications for original appointment shall thereby forfeit his or her membership on the committee. Membership on the committee shall not constitute public office, and no member shall be disqualified from holding public office by virtue of his or her membership. Each member of the committee shall serve without compensation, but each member of the committee shall be reimbursed for travel and other reasonable and necessary expenses incurred by him or her while attending called meetings of the committee.

(c) The advisory committee shall be empowered to use subcommittees as it deems necessary to carry out its duties and responsibilities. Members of such subcommittees shall be knowledgeable of the subject matter with which the subcommittee is concerned and shall be appointed by the commissioner upon the recommendation of the advisory committee. Such subcommittee members shall be reimbursed for travel and other necessary expenses while attending subcommittee meetings in the same manner as that of advisory committee members.

(d) Any amendments, modifications, or new provisions to the state minimum standard codes, when such are prepared, proposed, or recommended by the department, shall, prior to their submission to the board for approval, be submitted to the advisory committee for review and consideration. The department shall not forward any such amendment, modification, or new provision to the board without a favorable recommendation of a majority of the advisory committee.

(e) The advisory committee shall have at least two regular meetings annually and shall meet at other times as determined by the commissioner. (Ga. L. 1969, p. 546, §§ 2, 3; Ga. L. 1970, p. 734, § 1; Ga. L. 1971, p. 242, § 1; Ga. L. 1976, p. 651, § 5; Ga. L. 1976, p. 654, §§ 1, 2; Ga. L. 1980, p. 1316, § 4; Ga. L. 1982, p. 698, §§ 1-3; Ga. L. 1989, p. 14, § 8; Ga. L. 1989, p. 1659, § 5; Ga. L. 1997, p. 143, § 8; Ga. L. 2004, p. 551, § 4.)

**The 2004 amendment**, effective July 1, 2004, inserted “or her” throughout this Code section; and deleted the former sixth sentence of subsection (b) which read “The commissioner shall have until August 1, 1989, to appoint the members of the committee.”.

**Editor’s notes.** — The amendment of this Code section by Ga. L. 1989, p. 14, § 8, was superseded by the amendment by Ga. L. 1989, p. 1659, § 5, which was enacted later.

## RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 82.

**8-2-24.1. Review of denial of proposed amendment, modification, or new provision to code.**

Notwithstanding the provisions of subsection (d) of Code Section 8-2-24, when any party has proposed an amendment, modification, or new provision to a state minimum standard code and the same has not received a favorable recommendation by the advisory committee, the aggrieved party may within 30 days after notification by the department of the advisory committee's action file an appeal with the board. Not more than 60 days after receiving such appeal, the board shall make a determination whether to deny the appeal or to review the proposed amendment, modification, or new provision and make a determination on the same pursuant to Code Section 8-2-23. (Code 1981, § 8-2-24.1, enacted by Ga. L. 1989, p. 1659, § 6.)

**8-2-25. State-wide application of minimum standard codes; codes requiring adoption by municipality or county; adoption of more stringent requirements by local governments; adoption of standards for which state code does not exist.**

(a) On and after July 1, 2004, the state minimum standard codes enumerated in subdivisions (9)(A)(i)(I) through (9)(A)(i)(VIII) and (9)(B)(i)(I) through (9)(B)(i)(VIII) of Code Section 8-2-20 shall have state-wide application and shall not require adoption by a municipality or county. The governing authority of any municipality or county in this state is authorized to enforce the state minimum standard codes enumerated in this subsection.

(b) The state minimum standard codes enumerated in subdivisions (9)(A)(i)(IX) through (9)(A)(i)(XIV) and (9)(B)(i)(IX) through (9)(B)(i)(XI) of Code Section 8-2-20 shall not be applicable in a jurisdiction until adopted by a municipality or county. The governing authority of any municipality or county in this state is authorized to adopt and enforce the state minimum standard codes enumerated in this subsection in that subject area which is being regulated by the municipality or county, and a copy of the local ordinance or resolution adopting any such code shall be forwarded to the department in order that such municipality or county may be apprised of subsequent amendments in the state minimum standard code so adopted.

(c)(1) In the event that the governing authority of any municipality or county finds that the state minimum standard codes do not meet its needs, the local government may provide requirements not less stringent

than those specified in the state minimum standard codes when such requirements are based on local climatic, geologic, topographic, or public safety factors; provided, however, that there is a determination by the local governing body of a need to amend the requirements of the state minimum standard code based upon a demonstration by the local governing body that local conditions justify such requirements not less stringent than those specified in the state minimum standard codes for the protection of life and property. All such proposed amendments shall be submitted by the local governing body to the department 60 days prior to the adoption of such amendment. Concurrent with the submission of the proposed amendment to the department, the local governing body shall submit in writing the legislative findings of the governing body and such other documentation as the local governing body deems helpful in justifying the proposed amendment. The department shall review and comment on a proposed amendment. Such comment shall be in writing and shall be sent to the submitting local government with a recommendation:

(A) That the proposed local amendment should not be adopted, due to the lack of sufficient evidence to show that such proposed local amendment would be as stringent as the state minimum standard codes and the lack of sufficient evidence to show that local climatic, geologic, topographic, or public safety factors require such an amendment;

(B) That the proposed local amendment should be adopted, due to a preponderance of evidence that such proposed local amendment would be as stringent as the state minimum standard codes and a preponderance of evidence that the local climatic, geologic, topographic, or public safety factors require such an amendment; or

(C) That the department has no recommendation regarding the adoption or disapproval of the proposed local amendments, due to the lack of sufficient evidence to show that such proposed local amendment would or would not be as stringent as the state minimum standard codes and the lack of sufficient evidence to show that local climatic, geologic, topographic, or public safety factors require or do not require such an amendment.

(2) The department shall have 60 days after receipt of a proposed local amendment to review the proposed amendment and make a recommendation as set forth in paragraph (1) of this subsection. In the event that the department fails to respond within the time allotted, the local governing body may adopt the proposed local amendment.

(3) In the event that the department recommends against the adoption of the proposed local amendment, a local governing body shall specifically vote to reject the department's recommendations before any local amendment may be adopted.



(4) No local amendment shall become effective until the local governing body has caused a copy of the adopted amendment to be filed with the department. A copy of an amendment shall be deemed to have been filed with the department when it has been placed in the United States mail, return receipt requested.

(5) Nothing in this subsection shall be construed so as to require approval by the department before a local amendment shall become effective.

(6) The department shall maintain a file of all amendments to the state minimum standard codes adopted by the various municipalities and counties in the state, which information shall be made available to the public upon request. The department may charge reasonable fees for copies of such information. An index of such amendments shall be included in each new edition of a state minimum standard code.

(7) At the time of issuing a building permit, the issuing county or municipality shall notify the holder of the permit of any local amendments to the state minimum standard codes which are in effect for that county or municipality and that any such amendments are on file with the department. A county or municipality may satisfy this notice requirement by posting or providing a summary of the topic of such local amendment or amendments and the address and telephone number of the department.

(d) Except as otherwise provided in subsection (c) of this Code section, building related codes or ordinances dealing with the subjects of historic preservation, high-rise construction, or architectural design standards for which a state minimum standard code does not exist may be adopted by a local jurisdiction following review by the department. The department's review shall be limited to a determination that the proposed code or ordinance is consistent with the approved state minimum standard codes when common elements exist and is not less restrictive than the requirement of said codes. Changes to all other state minimum standard codes shall be approved only pursuant to the provisions of this Code section regarding local amendments. (Ga. L. 1969, p. 546, § 5; Ga. L. 1980, p. 1316, § 5; Ga. L. 1982, p. 3, § 8; Ga. L. 1989, p. 1659, § 7; Ga. L. 1990, p. 1364, § 2; Ga. L. 2000, p. 452, § 1; Ga. L. 2004, p. 551, § 5.)

**The 2004 amendment**, effective July 1, 2004, in subsection (a), substituted "July 1, 2004" for "October 1, 1991" near the beginning and inserted "(9)(A)(i)(I) through (9)(A)(i)(VIII) and"; and substituted "subdi-

visions (9)(A)(i)(IX) through (9)(A)(i)(XIV) and (9)(B)(i)(IX) through (9)(B)(i)(XI)" for "subdivisions (9)(B)(i)(IX) through (9)(B)(i)(XIV)" in the first sentence of subsection (b).

## JUDICIAL DECISIONS

**Cited** in *Waller v. State Constr. Indus. Licensing Bd.*, 250 Ga. 529, 299 S.E.2d 554 (1983).

## OPINIONS OF THE ATTORNEY GENERAL

**Effect of state code on localities.** — Provisions of state standard minimum codes are effective only in those municipalities and counties whose governing authorities have adopted them. Further, municipal and county governing authorities are not required to use the provisions of the standard codes when adopting or amending their local construction codes. 1980 Op. Att'y Gen. No. 80-146.

**8-2-26. Enforcement of codes generally; employment and training of inspectors; contracts for administration and enforcement of codes.**

(a) The governing body of any municipality or county adopting any state minimum standard code shall have the power:

(1) To adopt by ordinance or resolution any reasonable provisions for the enforcement of the state minimum standard codes, including procedural requirements, provisions for hearings, provisions for appeals from decisions of local inspectors, and any other provisions or procedures necessary to the proper administration and enforcement of the requirements of the state minimum standard codes;

(2) To provide for inspection of buildings or similar structures to ensure compliance with the state minimum standard codes;

(3) To employ inspectors, including chief and deputy inspectors, and any other personnel necessary for the proper enforcement of such codes and to provide for the authority, functions, and duties of such inspectors;

(4) To require permits and to fix charges therefor;

(5) To contract with other municipalities or counties adopting any state minimum standard code to administer such codes and to provide inspection and enforcement personnel and services necessary to ensure compliance with the codes; and

(6) To contract with any other county or municipality whereby the parties agree that the inspectors of each contracting party may have jurisdiction to enforce the state minimum standard codes within the boundaries of the other contracting party.

(b) The commissioner shall be authorized to establish a training program for local inspectors whereby a representative of the department, upon the request of the governing authority of a county or municipality, may visit such county or municipality for the purpose of training the inspectors of such county or municipality in the effective enforcement of any state minimum standard code adopted by such county or municipality. The commissioner may from time to time establish regional training programs

whereby the inspectors of several different counties and municipalities may take advantage of the training made available by such regional training programs.

(c) No local inspector shall require any person performing work in compliance with a state minimum standard code or variations thereto which are in conformity with the provisions of this part to comply with the standards of any other building code not covered by this part.

(d)(1) In lieu of inspection by an inspector or other person employed by the governing authority of any county or municipality, a licensed master plumber or utility contractor shall have the option of installing a water or sewer line according to the alternative inspection procedure described in this subsection where the installation is on private property outside the building underground.

(2) If the master plumber or utility contractor elects to utilize this inspection procedure, he or she shall file with the local inspector:

(A) Notice that the water and sewer line will be installed in accordance with the International Plumbing Code and will be inspected pursuant to the alternative inspection procedure described in this subsection;

(B) A copy of his or her master plumber or utility contractor certificate issued by the State Construction Industry Licensing Board;

(C) A copy of his or her trenching competent person certificate;

(D) A certificate showing that a bond has been filed in accordance with paragraph (2) of subsection (b) of Code Section 43-14-12, except that such bond shall be in the amount of \$50,000.00 and issued by a surety rated "A," "Class VI," or better by the A. M. Best Company; and

(E) Within five business days after completion of the installation, a sworn certification that the water or sewer line has been installed in accordance with the International Plumbing Code.

(3) The department shall promulgate a standard form notice and a standard form certificate that shall be used to administer this subsection. Local inspectors shall make copies of the standard forms available to contractors.

(4) The master plumber or utility contractor shall be required to pay to the governing authority the applicable permit fee.

(5) Upon submission of the certification required by this subsection, the local governing authority shall be required to accept the inspection without the necessity of further inspection or approval, except that the local governing authority may perform an inspection at any time and may issue a stop-work order if the work is found to be in violation of code requirements.



(6) Any other provision of this subsection notwithstanding, the alternative inspection procedure described in this subsection shall be applicable only to installations on private individual single-family residential property.

(e)(1) Any county or municipal building permit issued in this state to a general contractor or homebuilder for residential or commercial construction shall have prominently printed thereon at least one inch apart from any other text on such permit and in type size and boldness equal to or greater than any other type size and boldness in the body of the permit the following:

“The issuance of this permit authorizes improvements of the real property designated herein which improvements may subject such property to mechanics’ and materialmen’s liens pursuant to Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated. In order to protect any interest in such property and to avoid encumbrances thereon, the owner or any person with an interest in such property should consider contacting an attorney or purchasing a consumer’s guide to the lien laws which may be available at building supply home centers.”

(2) Any county or municipal construction permit, including but not limited to mechanical, plumbing, or electrical permits, issued in this state on existing residential or commercial property shall have prominently printed thereon at least one inch apart from any other text on such permit and in type size and boldness equal to or greater than any other type size and boldness in the body of the permit the following:

“The issuance of this permit authorizes improvements of the real property designated herein which improvements may subject such property to mechanics’ and materialmen’s liens pursuant to Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated. In order to protect any interest in such property and to avoid encumbrances thereon, the owner or any person with an interest in such property should consider contacting an attorney or purchasing a consumer’s guide to the lien laws which may be available at building supply home centers.”

(3) Any person or entity which is issued a permit which authorizes improvements to new or existing residential or commercial real property shall be required to:

(A) Post a copy of such permit in a conspicuous place in the vicinity of such property where such improvements are being undertaken; or

(B) Deliver a copy of the permit to the property owner within ten days after the permit is received.

(f) A local inspector, including a fire service employee enforcing a state or local fire safety standard, who specifies a code violation noted during an

inspection shall, upon the written request of the permit holder, cite in writing the particular code book, section, and edition of the code which is the basis of the violation.

(g)(1) If a governing authority of a county or municipality cannot provide inspection services within two business days of receiving a valid written request for inspection, then, in lieu of inspection by inspectors or other personnel employed by such governing authority, any person, firm, or corporation engaged in a construction project which requires inspection shall have the option of retaining, at its own expense, a professional engineer who holds a certificate of registration issued under Chapter 15 of Title 43, and who is not an employee of or otherwise affiliated with or financially interested in such person, firm, or corporation, to provide the required inspection.

(2) Any inspection conducted by a registered professional engineer shall be no less extensive than an inspection conducted by a county or municipal inspector.

(3) The person, firm, or corporation retaining a registered professional engineer to conduct an inspection shall be required to pay to the county or municipality which requires the inspection the same permit fees and charges which would have been required had the inspection been conducted by a county or municipal inspector.

(4) The registered professional engineer shall be empowered to perform any inspection required by the governing authority of any county or municipality, including, but not limited to, inspections for footings, foundations, concrete slabs, framing, electrical, plumbing, heating ventilation and air conditioning (HVAC), or any and all other inspections necessary or required for the issuance of a certificate of occupancy by the governing authority of any county or municipality, provided that the inspection is within the scope of such engineer's branch of engineering expertise.

(5) The registered professional engineer shall submit a copy of his or her inspection report to the county or municipality.

(6) Upon submission by the registered professional engineer of a copy of his or her inspection report to the local governing authority, said local governing authority shall be required to accept the inspection of the registered professional engineer without the necessity of further inspection or approval by the inspectors or other personnel employed by the local governing authority unless said governing authority has notified the registered professional engineer, within two business days after the submission of the inspection report, that it finds the report incomplete or the inspection inadequate and has provided the registered professional engineer with a written description of the deficiencies and specific code requirements that have not been adequately addressed.

(7) A local governing authority may provide for the prequalification of registered professional engineers who may perform inspections pursuant to this subsection. No ordinance implementing prequalification shall become effective until notice of the governing authority's intent to require prequalification and the specific requirements for prequalification have been advertised in the newspaper in which the sheriff's advertisements for that locality are published. The ordinance implementing prequalification shall provide for evaluation of the qualifications of a registered professional engineer on the basis of the engineer's expertise with respect to the objectives of the inspection, as demonstrated by the engineer's experience, education, and training.

(8) Nothing in this subsection shall be construed to limit any public or private right of action designed to provide protection, rights, or remedies for consumers. (Ga. L. 1969, p. 546, § 6; Ga. L. 1970, p. 734, § 2; Ga. L. 1971, p. 242, § 5; Ga. L. 1980, p. 1316, § 6; Ga. L. 1989, p. 1659, § 8; Ga. L. 1996, p. 1632, § 1; Ga. L. 1997, p. 550, § 1; Ga. L. 1998, p. 1033, § 1; Ga. L. 2000, p. 452, § 2; Ga. L. 2000, p. 456, § 1; Ga. L. 2004, p. 551, § 6.)

**The 2004 amendment**, effective July 1, 2004, substituted "International Plumbing Code" for "Standard Plumbing Code" in subparagraphs (d)(2)(A) and (d)(2)(E).

**Cross references.** — Enforcement of laws requiring services of registered architects for certain buildings, § 43-4-15.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1996, "single-family" was substituted for "single family" in paragraph (d)(6).

Ga. L. 2000, p. 452, § 2 and Ga. L. 2000, p. 456, § 1 both added a subsection (f). Pursuant to Code Section 28-9-5, in 2000, the subsection (f) added by Ga. L. 2000, p. 456, § 1 was redesignated as subsection (g).

**Editor's notes.** — Ga. L. 1996, p. 1632, § 3, not codified by the General Assembly,

provides: "Any political subdivision may exempt itself from Section 1 of this Act by resolution or ordinance."

Ga. L. 1997, p. 550, § 3, not codified by the General Assembly, provides that no county or municipality shall be required to implement the requirements of that Act until such time as the county or municipality has consumed all building permit forms on hand as of January 1, 1998.

Ga. L. 1998, p. 1033, § 2, not codified by the General Assembly, provides: "This Act shall become effective on January 1, 1999, except that no county or municipality shall be required to implement the requirements of this Act until such time as the county or municipality has consumed all building permit forms on hand as of January 1, 1999."

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Buildings, § 12 et seq.

**ALR.** — Construction and application of statutes imposing upon employer or owner general duty regarding safety of building, 101 ALR 408.

Liability of owner or occupant of premises to building or construction inspector coming upon premises in discharge of duty, 28 ALR3d 891.

Validity and construction of statute or ordinance providing for repair or destruction of residential building by public authorities at owner's expense, 43 ALR3d 916.

What interest qualifies one as an "owner" for purposes of making application for a building permit, 61 ALR3d 1128.

Liability of municipal corporation for negligent performance of building inspector's duties, 24 ALR5th 200.



**8-2-26.1. Definitions and requirements.**

(a) As used in this Code section, the term:

(1) "ICC" means the International Code Council.

(2) "Qualified inspector" means:

(A) A person inspecting for compliance with the International Building Code or the building portion of the International Residential Code for One- and Two-Family Dwellings who holds a certification from the ICC as a building inspector;

(B) A person inspecting for the compliance of residential buildings with the National Electrical Code or the electrical portion of the International Residential Code for One- and Two-Family Dwellings who holds a certification from the ICC as a residential electrical inspector or an electrical contractor license from the State Construction Industry Licensing Board;

(C) A person inspecting for the compliance of nonresidential buildings with the National Electrical Code who holds a certification from the ICC as a commercial electrical inspector or an electrical contractor license from the State Construction Industry Licensing Board;

(D) A person inspecting for compliance with the International Fuel Gas Code who holds a certification from the ICC as a mechanical inspector or plumbing inspector or a conditioned air contractor, journeyman plumber, or master plumber license from the State Construction Industry Licensing Board;

(E) A person inspecting for compliance with the International Mechanical Code or the mechanical portion of the International Residential Code for One- and Two-Family Dwellings who holds a certification from the ICC as a mechanical inspector or a conditioned air contractor license from the State Construction Industry Licensing Board;

(F) A person inspecting for compliance with the International Plumbing Code or the plumbing portion of the International Residential Code for One- and Two-Family Dwellings who holds a certification from the ICC as a plumbing inspector or a journeyman plumber or master plumber license from the State Construction Industry Licensing Board;

(G) A person inspecting for compliance with any portion of the International Residential Code for One- and Two-Family Dwellings who holds a certification from the ICC as a one and two-family dwelling inspector;

(H) A person inspecting for compliance with the International Energy Conservation Code for Buildings who has completed eight hours of training that is conducted or approved by the department; or

(I) A person inspecting for compliance with any of the codes listed in subparagraphs (A) through (H) of this paragraph who holds a certificate of registration as a professional engineer issued under Chapter 15 of Title 43 and is practicing within the scope of his or her branch of engineering expertise while conducting such inspection.

(3) “State Construction Industry Licensing Board” means that board created pursuant to Code Section 43-14-3.

(b) The governing authority of any municipality or county which has adopted provisions for the enforcement of the state minimum standard codes shall post a notice stating whether the personnel employed by that governing authority to conduct inspections for compliance with such codes are qualified inspectors. Such notice shall separately address each minimum standard code enumerated in subdivisions (9)(A)(i)(I) through (9)(A)(i)(VIII) or (9)(B)(i)(I) through (9)(B)(i)(VIII) of Code Section 8-2-20 and the building, electrical, mechanical, and plumbing portions of the International Residential Code for One- and Two-Family Dwellings, and state whether all personnel assigned to conduct inspections for the particular code or portion of the code are qualified inspectors for that code or portion of the code.

(c) If such notice states that not all personnel assigned to conduct inspections for a particular state minimum standard code or portion of such code are qualified inspectors for that code or portion of the code, then the governing authority may retain qualified inspectors not employed by the governing authority to conduct inspections. If the governing authority does not so retain qualified inspectors, then any person, firm, or corporation engaged in a construction project which requires inspection shall have the option of retaining, at its own expense, a person who is a qualified inspector for that code or portion of the code and who is not an employee of or otherwise affiliated with or financially interested in such person, firm, or corporation to provide the required inspection.

(d) The person, firm, or corporation retaining a qualified inspector to conduct an inspection pursuant to this Code section shall be required to pay to the county or municipality which requires the inspection the same permit fees and charges which would have been required had the inspection been conducted by a county or municipal inspector.

(e) A qualified inspector retained pursuant to this Code section shall be empowered to perform any inspection required by the governing authority of any county or municipality, including but not limited to inspections for footings, foundations, concrete slabs, framing, electrical, plumbing, heating ventilation and air conditioning (HVAC), or any and all other inspections

necessary or required for the issuance of a certificate of occupancy by the governing authority of any county or municipality; provided, however, that the qualified inspector must possess the qualifications described in paragraph (2) of subsection (a) of this Code section for the particular type of inspection. Any inspection conducted pursuant to this Code section shall be no less extensive than an inspection conducted by a county or municipal inspector.

(f) Upon submission by the qualified inspector of a copy of his or her inspection report to the local governing authority, said local governing authority shall be required to accept the inspection of the qualified inspector without the necessity of further inspection or approval by the inspectors or other personnel employed by the local governing authority unless said governing authority has notified the qualified inspector, within two business days after the submission of the inspection report, that it finds the report incomplete or the inspection inadequate and has provided the qualified inspector with a written description of the deficiencies and specific code requirements that have not been adequately addressed.

(g) Nothing in this Code section shall be construed to apply to inspections for compliance with a state or local fire safety standard or erosion control standard.

(h) Nothing in this Code section shall be construed to limit any public or private right of action designed to provide protection, rights, or remedies for consumers. (Code 1981, § 8-2-26.1, enacted by Ga. L. 2000, p. 452, § 3; Ga. L. 2004, p. 551, § 7.)

**The 2004 amendment**, effective July 1, 2004, rewrote subsections (a) and (b).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2004, “means the International Code Council” was substituted for “means International Code Council” in

paragraph (a)(1); “compliance with any portion” was substituted for “compliance any portion” in subparagraph (a)(2)(G); and “(9)(A)(i)(VIII) or (9)(B)(i)(I)” was substituted for “(9)(A)(i)(VIII) (9)(B)(i)(I)” in subsection (b).

## **8-2-27. Conformance of buildings to energy conservation code; applicability to exempted and renovated buildings; appeals.**

(a) The design, erection, construction, and alteration of any building to which the International Energy Conservation Code shall apply shall be accomplished so that the building or applicable portions thereof shall meet or conform to such code.

(b) Enforcement of compliance with this Code section shall be solely the province of local governing authorities, except in regard to buildings owned by the state. In state owned buildings, the state agency which owns the building shall provide for the compliance with the code adopted under this part. Local governing authorities are authorized to adopt rules and regulations for the administration and enforcement of the code and to



adopt such penalties for violation of the code as they deem appropriate. Local governing authorities are authorized to exercise all the powers enumerated in subsection (a) of Code Section 8-2-26 in enforcement of the International Energy Conservation Code.

(c) The International Energy Conservation Code shall not apply to exempted buildings; and, with respect to renovated buildings, such code shall apply only to portions or systems of the building which are directly involved in the renovation.

(d) The commissioner or his or her designated representative shall have authority to hear appeals relating to the interpretation, enforcement, and administration by local governing authorities of the International Energy Conservation Code and exceptions to such code. The commissioner may, at his or her option, hear de novo cases but shall not hear any appeal until it is determined that the appeal procedures available through the affected local government have been exhausted. If, on appeal, the commissioner determines that the local governing authority erred in its interpretation of the code, he or she shall remand the case to the local government with instructions to take such action as he or she directs. Further appeals may be made as provided by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Ga. L. 1978, p. 2212, §§ 4, 6, 7; Ga. L. 1980, p. 1316, § 7; Ga. L. 1989, p. 14, § 8; Ga. L. 2004, p. 551, § 8.)

**The 2004 amendment**, effective July 1, 2004, substituted "International Energy Conservation Code" for "Georgia State Energy Code for Buildings" throughout this

Code section; and, in subsection (d), inserted "or her" twice and "or she" twice.

**Cross references.** — Solar easements, § 44-9-20 et seq.

## **8-2-28. Adoption by municipality or county enforcing construction code of state minimum standard code.**

Any municipality or county either enforcing or adopting and enforcing a construction code shall utilize one or more of the state minimum standard codes established pursuant to this part. (Ga. L. 1969, p. 546, § 7; Ga. L. 1980, p. 1316, § 9; Ga. L. 1989, p. 1659, § 9; Ga. L. 2004, p. 551, § 8.)

**The 2004 amendment**, effective July 1, 2004, substituted "Any" for "On and after

October 1, 1991, any" at the beginning of this Code section.

## **RESEARCH REFERENCES**

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Buildings, §§ 16, 17.

**ALR.** — Change in law pending application for permit or license, 169 ALR 584.

## **8-2-29. Powers of department generally.**

In addition to any other powers granted by this part, the department shall have the power to:

- (1) Administer all funds available under this part;
- (2) Accept any grant of funds made by the United States government or any agency thereof for the purpose of carrying out this part;
- (3) Request from the various departments, agencies, and authorities of the state and its political subdivisions such available information as it may require in its work; and all such departments, agencies, and authorities shall furnish, within a reasonable time, such requested available information to the department;
- (4) Contract with the United States government or agencies thereof, with political subdivisions of the state, and with private persons and corporations; and
- (5) Do all other things necessary and proper to exercise its powers and perform its duties in accordance with this part. (Ga. L. 1969, p. 546, § 8; Ga. L. 1970, p. 734, § 2; Ga. L. 1980, p. 1316, § 8.)

#### **8-2-30. Scope of applicability of part generally.**

(a) Except as otherwise provided in this Code section, this part shall apply to all installations, alterations, and repairs of plumbing, air-conditioning and heating, or electrical systems within or on public or private buildings, structures, or premises.

(b) This part shall not apply to the installation, alteration, or repair of plumbing, air-conditioning and heating, or electrical systems up to and including the meters, where such work is performed by or is an integral part of the system owned or operated by a public service corporation or by the water or gas department of any city in this state in rendering its duly authorized service as such.

(c) This part shall not apply to the installation, alteration, or repair of plumbing, air-conditioning and heating, or electrical systems where such work is an integral part of the system owned or operated, in rendering its duly authorized service as such, by a railroad company, a pipeline company, a mining company, or a public utility in the exercise of its normal functions as a public utility, or where such work is an integral part of any irrigation system on farms, ranches, or other open, unpopulated areas where such work will not be located within 30 feet of any dwelling or any building devoted to animal husbandry.

(d) This part shall not prohibit an individual from installing, altering, or repairing plumbing systems and fixtures, air-conditioning and heating systems and fixtures, or electrical systems in a single-family dwelling owned and occupied by him or her, provided that all such work must be done in conformity with all other provisions of this part and the orders, rules, and regulations of the department.

(e) This part shall not prohibit an individual from installing, altering, or repairing plumbing systems and fixtures, air-conditioning and heating systems and fixtures, or electrical systems in a farm or ranch building owned or occupied by him or her, provided that all such work must be done in conformity with all other provisions of this part and the orders, rules, and regulations of the department.

(f) This Code section shall not affect or abrogate the requirements of the International Energy Conservation Code. (Ga. L. 1969, p. 546, § 10; Ga. L. 1980, p. 1316, § 11; Ga. L. 2004, p. 551, § 9.)

**The 2004 amendment**, effective July 1, 2004, inserted “or her” in subsections (d) and (e) and substituted “International Energy Conservation Code” for “Georgia State Energy Code for Buildings” at the end of subsection (f).

### 8-2-31. Effect of part.

(a) Nothing in this part shall repeal or be construed as abrogating or otherwise affecting the power of any state department or agency to promulgate regulations, make inspections, or approve plans in accordance with any other applicable provisions of law.

(b) Nothing in this part shall be construed as repealing or otherwise affecting authorization for historic preservation districts established pursuant to Article 2 of Chapter 10 of Title 44, the “Georgia Historic Preservation Act.”

(c) Nothing in this part shall be construed as repealing or otherwise affecting:

(1) Part 6 of this article, relating to elevators, dumbwaiters, escalators, manlifts, and moving walks;

(2) Chapter 11 of Title 34, the “Boiler and Pressure Vessel Safety Act”;

(3) Chapter 3 of Title 30, relating to access to and use of public facilities by physically disabled persons; or

(4) The Georgia State Fire Code as adopted by the Safety Fire Commissioner pursuant to Code Section 25-2-13.

(d) Standards for the construction of manufactured homes covered under Part 2 of Article 2 of this chapter shall be governed by the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. Section 5401, et seq., and nothing in this part is intended to permit the adoption of any other standards for or local regulation of the construction of manufactured homes.

(e) Standards relative to liquefied petroleum gas shall be governed by Article 10 of Chapter 1 of Title 10 and no provision of this part shall be construed to permit the adoption of standards, rules, or regulations relative



to liquefied petroleum gas by the Department of Community Affairs or the adoption by local governments of regulations or ordinances relative to liquefied petroleum gas in conflict with Article 10 of Chapter 1 of Title 10. (Ga. L. 1969, p. 546, § 5; Ga. L. 1980, p. 1316, § 10; Ga. L. 1981, p. 717, § 1; Ga. L. 1989, p. 1659, § 10; Ga. L. 1992, p. 2134, § 1; Ga. L. 1994, p. 97, § 8; Ga. L. 1995, p. 1302, § 14.)

## PART 2A

### RESOLUTION OF CONSTRUCTION DEFECTS

**Effective date.** — This part became effective May 13, 2004.

**Editor's notes.** — Ga. L. 2004, p. 500, § 2, not codified by the General Assembly, provides that this Act shall apply to all actions

commenced after May 13, 2004, regardless of the date of sale or substantial completion, improvement, or repair of the dwelling at issue in the action.

#### 8-2-35. Legislative findings and declarations.

The legislature finds, declares, and determines that Georgia needs an alternative method to resolve legitimate construction disputes that would reduce the need for litigation while adequately protecting the rights of homeowners. The legislature declares that an effective alternative dispute resolution mechanism in certain construction defect matters should involve the claimant filing a notice of claim with the contractor that the claimant asserts is responsible for the defect and providing the contractor with the opportunity to resolve the claim without litigation. (Code 1981, § 8-2-35, enacted by Ga. L. 2004, p. 500, § 1.)

#### 8-2-36. Definitions.

As used in this part, the term:

(1) "Action" means any civil lawsuit, judicial action, or arbitration proceeding asserting a claim in whole or in part for damages or other relief in connection with a dwelling caused by an alleged construction defect.

(2) "Association" means a corporation formed for the purpose of exercising the powers of the members of any common interest community.

(3) "Claimant" means anyone who asserts a claim concerning a construction defect.

(4) "Construction defect" has the meaning assigned by a written, express warranty either provided by the contractor or required by applicable statutory law; if no written, express warranty or applicable statutory warranty provides a definition, then "construction defect"

means a matter concerning the design, construction, or repair of a dwelling, of an alteration of or repair or addition to an existing dwelling, or of an appurtenance to a dwelling on which a person has a complaint against a contractor. The term may include any physical damage to the dwelling, any appurtenance, or the real property on which the dwelling or appurtenance is affixed proximately caused by a construction defect.

(5) “Contractor” means any person, firm, partnership, corporation, association, or other organization that is engaged in the business of designing, developing, constructing, or selling dwellings or the alteration of or addition to an existing dwelling, repair of a new or existing dwelling, or construction, sale, alteration, addition, or repair of an appurtenance to a new or existing dwelling. The term includes:

(A) An owner, officer, director, shareholder, partner, or employee of the contractor;

(B) Subcontractors and suppliers of labor and materials used by a contractor in a dwelling; and

(C) A risk retention group registered under applicable law, if any, that insures all or any part of a contractor’s liability for the cost to repair a construction defect.

(6) “Dwelling” means a single-family house, duplex, or multifamily unit designed for residential use in which title to each individual unit is transferred to the owner under a condominium or cooperative system and shall include common areas and improvements that are owned or maintained by an association or by members of an association. A dwelling includes the systems, other components, improvements, other structures, or recreational facilities that are appurtenant to the house, duplex, or multifamily unit at the time of its initial sale but not necessarily a part of the house, duplex, or multifamily unit.

(7) “Serve” or “service” means delivery by certified mail or statutory overnight delivery, return receipt requested, to the last known address of the addressee. For a corporation, limited partnership, limited liability company, or other registered business organization, it means service on the registered agent or other agent for service of process authorized by law. (Code 1981, § 8-2-36, enacted by Ga. L. 2004, p. 500, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2004, substituted “anyone” for “any one” in subsection (3); and inserted quotes around “construction defect” in subsection (4).

## 8-2-37. Required compliance with this part.

If a claimant files an action without first complying with the requirements of this part, on application by a party to the action, the court or arbitrator shall stay the action until the claimant has complied with the requirements

of this part. To the extent that the action includes a cause of action for damages due to personal injury or death, such cause of action shall not be subject to stay pursuant to this Code section. (Code 1981, § 8-2-37, enacted by Ga. L. 2004, p. 500, § 1.)

**8-2-38. Notice of claim; written response of contractor to claim; effect of contractor's failure to respond; inspection; offer of settlement and rejection of offer; alteration of procedure for notice.**

(a) In every action subject to this part, the claimant shall, no later than 90 days before initiating an action against a contractor, provide service of written notice of claim on that contractor. The notice of claim shall state that the claimant asserts a construction defect claim or claims and is providing notice of the claim or claims pursuant to the requirements of this part. The notice of claim shall describe the claim or claims in detail sufficient to explain the nature of the alleged construction defects and the results of the defects. In addition, the claimant shall provide to the contractor any evidence that depicts the nature and cause of the construction defect, including expert reports, photographs, and videotapes, if that evidence would be discoverable under evidentiary rules.

(b) Within 30 days after service of the notice of claim by a claimant required in subsection (a) of this Code section, each contractor that has received the notice of claim shall serve on the claimant, and on any other contractor that has received the notice of claim, a written response to the claim or claims, which either:

(1) Offers to settle the claim by monetary payment, the making of repairs, or a combination of both, without inspection; or

(2) Proposes to inspect the dwelling that is the subject of the claim.

(c) If the contractor wholly rejects the claim and will neither remedy the alleged construction defect nor settle the claim or does not respond to the claimant's notice of claim within the time stated in subsection (b) of this Code section, the claimant may bring an action against the contractor for the claims described in the notice of claim without further notice except as otherwise provided under applicable law.

(d) If the claimant rejects the settlement offer made by the contractor, the claimant shall provide written notice of the claimant's rejection to the contractor and, if represented by legal counsel, his or her attorney. The notice shall include the reasons for the claimant's rejection of the contractor's proposal or offer. If the claimant believes that the settlement offer:

(1) Omits reference to any portion of the claim; or

(2) Was unreasonable in any manner,



the claimant shall in his or her written notice include those items that claimant believes were omitted and set forth in detail all known reasons why the claimant believes the settlement offer is unreasonable.

(e) If a proposal for inspection is made pursuant to paragraph (2) of subsection (b) of this Code section, the claimant shall, within 30 days of receiving the contractor's proposal, provide the contractor and its subcontractors, agents, experts, and consultants prompt and reasonable access to the dwelling to inspect the dwelling, document any alleged construction defects, and perform any destructive or nondestructive testing required to fully and completely evaluate the nature, extent, and cause of the claimed defects and the nature and extent of any repairs or replacements that may be necessary to remedy the alleged defects. If destructive testing is required, the contractor shall give claimant advance notice of such tests and shall, after completion of the testing, return the dwelling to its pretesting condition. If any inspection or testing reveals a condition that requires additional testing to allow the contractor to fully and completely evaluate the nature, cause, and extent of the construction defect, the contractor shall provide notice to the claimant of the need for such additional testing and the claimant shall provide prompt and reasonable access as set forth in this Code section. If a claim is asserted on behalf of owners of multiple dwellings or multiple owners of units within a multifamily complex, the contractor shall be entitled to inspect each of the dwellings or units.

(f) Within 14 days following completion of the inspection and testing set forth in this Code section, the contractor shall serve on the claimant:

(1) A written offer to fully or partially remedy the construction defect at no cost to the claimant. Such offer shall include a description of any additional construction necessary to remedy the defect described in the claim and an anticipated timetable for the completion of such construction;

(2) A written offer to settle the claim by monetary payment;

(3) A written offer including a combination of repairs and monetary payment; or

(4) A written statement that the contractor will not proceed further to remedy the defect, along with the reasons for such rejection.

(g) If a claimant accepts a contractor's offer made pursuant to paragraph (1), (2), or (3) of subsection (f) of this Code section and the contractor does not proceed to make the monetary payment or remedy the construction defect or both within the agreed timetable, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice except as otherwise provided by applicable law. In such a situation, the claimant may also file the contractor's offer and claimant's acceptance, and such offer and acceptance will create a rebutta-

ble presumption that a binding and valid settlement agreement has been created and should be enforced by the court or arbitrator.

(h) If a claimant receives a written statement that the contractor will not proceed further to remedy the defect, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice except as otherwise provided by applicable law. The contractor's written statement shall include all known reasons for the rejection of the claim.

(i) If the claimant rejects the offer made by the contractor to remedy the construction defect or to settle the claim by monetary payment or a combination of each, the claimant shall serve written notice of the claimant's rejection on the contractor. The notice shall include all known reasons for the claimant's rejection of the contractor's offer.

(j) Upon receipt of a claimant's rejection and the reasons for such rejection, the contractor may, within 15 days of receiving the rejection, make a supplemental offer of repair or monetary payment or both to the claimant.

(k) If the claimant rejects the supplemental offer made by the contractor to repair the construction defect or to settle the claim by monetary payment or a combination of each, the claimant shall serve written notice of the claimant's rejection on the contractor. The notice shall include all known reasons for the claimant's rejection of the contractor's supplemental settlement offer.

(l) If a claimant rejects a reasonable offer, including any reasonable supplemental offer, made as provided by this part or does not permit the contractor to repair the construction defect pursuant to an accepted offer of settlement, the claimant may not recover an amount in excess of:

(1) The fair market value of the offer of settlement or the actual cost of the repairs made; or

(2) The amount of a monetary offer of settlement.

For purposes of this subsection, the trier of fact shall determine the reasonableness of an offer of settlement made pursuant to this part. If the claimant has rejected a reasonable offer, including any reasonable supplemental offer, and any other law allows the claimant to recover costs and attorneys' fees, then the claimant may recover no costs or attorneys' fees incurred after the date of his or her rejection.

(m) Any claimant accepting the offer of the contractor to remedy a construction defect shall do so by serving the contractor with a written notice of acceptance within a reasonable period of time after receipt of the contractor's settlement offer but no later than 30 days after receipt of the offer. If no response is served upon the contractor within the 30 day period, then the offer shall be deemed accepted.

(n) If a claimant accepts a contractor's offer to repair a construction defect described in a notice of claim, the claimant shall provide the contractor and its subcontractors, agents, experts, and consultants prompt and unfettered access to the dwelling to perform and complete the construction by the timetable stated in the settlement offer.

(o) If, during the pendency of the notice, inspection, offer, acceptance, or repair process, an applicable limitations period would otherwise expire, the claimant may file an action against the contractor, but such action shall be immediately stayed until completion of the notice of claim process described in this part. This subsection shall not be construed to:

(1) Revive a statute of limitations period that has expired prior to the date on which a claimant's written notice of claim is served; or

(2) Extend any applicable statute of repose.

(p) After the sending of the initial notice of claim, a claimant and a contractor may, by written mutual agreement, alter the procedure for the notice of claim process described in this part. (Code 1981, § 8-2-38, enacted by Ga. L. 2004, p. 500, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2004, "the contractor" was substituted for "then contractor" in the last sentence of subsection (e); substituted "to the claimant" for "to claimant" at

the end of subsection (j); substituted "then the claimant" for "then claimant" in the last paragraph of subsection (l)(2); and substituted "experts, and" for "experts and" in subsection (n).

### **8-2-39. Discovery of additional defects after original notice given.**

A construction defect that is discovered after a claimant has provided a contractor with the initial claim notice may not be alleged in an action until the claimant has given the contractor who performed the original construction:

(1) Written notice of claim regarding the alleged defect as required by Code Section 8-2-38; and

(2) An opportunity to resolve the notice of claim in the manner provided in Code Section 8-2-38. (Code 1981, § 8-2-39, enacted by Ga. L. 2004, p. 500, § 1.)

### **8-2-40. Effect of claimant's acceptance of settlement; subrogation of insurance.**

(a) If a claimant accepts an offer made in compliance with this part and the contractor fulfills the offer in compliance with this part:

(1) The claimant shall thereafter be barred from bringing an action for the claim described in the notice of claim; and



(2) The contractor shall be deemed, for insurance purposes, to have been legally obligated to make the repairs or the monetary payment as if the claimant had recovered a judgment against the contractor in the amount of the cost of the repairs or the amount of the monetary payment or both.

(b) An insurer paying a claim under this part shall be subrogated to the rights of the claimant to whom the amounts were paid against the person causing the construction defect, damages, or other reason for payment to the extent that claim payments were made, except that the insurer shall be required to pay any applicable part of costs, expenses, and attorney's fees incurred in connection therewith. (Code 1981, § 8-2-40, enacted by Ga. L. 2004, p. 500, § 1.)

**8-2-41. Notice to consumer prior to beginning initial construction work.**

(a) Upon entering into a contract for sale, construction, or improvement of a dwelling, the contractor shall provide notice to the owner of the dwelling of the contractor's right to resolve alleged construction defects before a claimant may commence litigation against the contractor. Such notice shall be conspicuous and may be included as part of the contract.

(b) The notice required by subsection (a) of this Code section shall be in substantially the following form:

GEORGIA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, IMPROVED, OR REPAIRED YOUR HOME. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS OR BOTH. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION. (Code 1981, § 8-2-41, enacted by Ga. L. 2004, p. 500, § 1.)

**8-2-42. Bribery of property or association managers prohibited; penalty right and responsibilities of association for remedying construction defects; procedure.**

(a) A person shall not provide or offer to provide anything of value, directly or indirectly, to a property manager of an association or to a

member or officer of an association to induce the property manager, member, or officer to encourage or discourage the association to file a claim for damages arising from a construction defect.

(b) A property manager retained by a homeowner's association shall not accept anything of value, directly or indirectly, in exchange for encouraging or discouraging the association that he or she manages to file a claim for damages arising from a construction defect.

(c) A member or officer of an association shall not accept anything of value, directly or indirectly, in exchange for encouraging or discouraging the association of which he or she is a member or officer to file a claim for damages arising from a construction defect.

(d) A person who knowingly violates subsection (a), (b), or (c) of this Code section shall be guilty of a misdemeanor.

(e) An association may bring an action against a contractor to recover damages resulting from construction defects in any of the common elements or limited common elements of the common interest community only. Such action may be maintained only after:

(1) The association first obtains the written approval of each unit's owner whose interest in the common elements or limited common elements will be the subject of the action;

(2) A vote of the units' owners to which at least a majority of the votes of the members of the association are allocated;

(3) The full board of directors of the association and the contractor have met in person and conferred in a good faith attempt to resolve the association's claim or the contractor has definitively declined or ignored the requests to meet with the board of directors of the association; and

(4) The association has otherwise satisfied all of the preaction requirements for a claimant to commence an action as set forth in this part.

(f) At least three business days in advance of any vote to commence an action by an association to recover damages resulting from construction defects in any of the common elements or limited common elements of the common interest community, the attorney representing the association shall provide to each unit's owner a written statement that includes, in reasonable detail:

(1) The defects and damages or injuries to the common elements or limited common elements;

(2) The cause of the defects, if the cause is known;

(3) The nature and the extent that is known of the damage or injury resulting from the defects;

(4) The location of each defect within the common elements or limited common elements, if known;

(5) A reasonable estimate of the cost of the action or mediation, including reasonable attorneys' fees and costs, expert fees, and the costs of testing; and

(6) All disclosures that the unit owner is required to make upon the sale of the unit.

(g) An association or an attorney for an association shall not employ a person to perform destructive tests to determine any damage or injury to a unit, common element, or limited common element caused by a construction defect unless:

(1) The person is licensed as a contractor pursuant to law;

(2) The association has obtained the prior written approval of each unit's owner whose unit or interest in the common element or limited common element will be affected by such testing;

(3) The person performing the tests has provided a written schedule for repairs;

(4) The person performing the tests is required to repair all damage resulting from such tests in accordance with state laws and local ordinances relating thereto;

(5) The association or the person so employed obtains all permits required to conduct such tests and to repair any damage resulting from such tests; and

(6) Reasonable prior notice and opportunity to observe the tests is given to the contractor against whom an action may be brought as a result of the tests.

(h) An association may commence an action only upon a vote or written agreement of the owners of the units to which at least a majority of the votes of the members of the association are allocated. In such a case, the association shall provide written notice to the owner of each unit of the meeting at which the commencement of an action is to be considered or action is to be taken at least 21 calendar days before the meeting.

(i) The board of directors of an association may, without giving notice to the units' owners, employ a contractor and such other persons as are necessary to make such immediate repairs to a unit or common element within the common interest community as are required to protect the health, safety, and welfare of the units' owners. (Code 1981, § 8-2-42, enacted by Ga. L. 2004, p. 500, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2004, "or the contractor" was substituted for "or contractor" in subparagraph (e)(3).



**8-2-43. No cause of action created; contractor's right to seek recovery from subcontractor or other professionals.**

(a) Nothing in this part shall create any cause of action on behalf of any claimant or contractor.

(b) This part does not apply to a contractor's right to seek contribution, indemnity, or recovery against a subcontractor, supplier, or design professional for any claim made against a contractor by a claimant. (Code 1981, § 8-2-43, enacted by Ga. L. 2004, p. 500, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2004, a comma was inserted between "indemnity" and "or" in subsection (b).

### PART 3

#### FIRE ESCAPES

**Administrative rules and regulations.** — Georgia, Rules of Comptroller General, Fire safety standards generally, Official Compilation of Rules and Regulations of State of Safety Fire Department, Ch. 120-3-3.

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 49 Am. Jur. 2d, Landlord and Tenant, §§ 599, 892-895.

**ALR.** — Power of state to require changes in buildings previously erected in order to comply with new requirements and standards for protection of health and safety, 109 ALR 1117.

What is a "factory" within statutes relating to safety and health of employees, 163 ALR 447.

Liability of innkeeper to guest for injury due to fire, 60 ALR3d 1217.

**8-2-50. Providing of fire escapes by building owners; requirements regarding location and construction of fire escapes and exit doors.**

(a) Owners of buildings more than two stories in height, not including the basement, who utilize any level above the second story wholly or partially as a factory or workshop shall provide more than one exit from each story of the building above the second story by stairways on the inside or outside of the building.

(b) Such stairways shall be, as nearly as is practicable, at opposite ends of each story and so constructed that, in case of fire, the ground can readily be reached from the third and higher stories.

(c) All stairways on the outside of buildings covered by this Code section shall have suitable railed landings at each story above the first and shall connect with each of said stories by doors or windows opening outward; and such doors, windows, and landings shall at all times be kept clear of obstructions.

(d) All the main doors of such buildings, both inside and outside, shall open outward, and each story shall be amply supplied with fire-extinguishing devices. (Ga. L. 1889, p. 168, § 1; Civil Code 1895, § 2622; Civil Code 1910, § 3151; Code 1933, § 54-402.)

**Cross references.** — Requirements regarding construction, maintenance, etc., of buildings presenting fire hazards to persons or property, § 25-2-13 et seq.

JUDICIAL DECISIONS

**Cited** in *Irwin v. Torbert*, 204 Ga. 111, 49 S.E.2d 70 (1948).

RESEARCH REFERENCES

**ALR.** — Liability for injury to person on business premises in consequence of passing through wrong doorway, 20 ALR 1147; 27 ALR 585; 42 ALR 1098. Liability for personal injury by fire escape, 42 ALR 1111.

8-2-51. Inspection of buildings; notifying owners regarding noncompliance with requirements relating to fire escapes.

(a) The governing authority of the city where any building covered by Code Section 8-2-50 is situated, or the judge of the probate court of the county if the building is situated outside of any city, shall require the fire marshal or chief officer of the fire department or, if there is no fire marshal or chief firefighter, some other suitable official to inspect such buildings at least once a year and report in writing to the municipal authorities or the judge of the probate court that the requirements of Code Section 8-2-50 have or have not been complied with.

(b) If the requirements of Code Section 8-2-50 have not been complied with, the municipal authorities or the judge of the probate court, as the case may be, shall convey to the owner of such building written notice requiring him to provide needed alterations or additions. (Ga. L. 1889, p. 168, § 2; Civil Code 1895, § 2623; Civil Code 1910, § 3152; Code 1933, § 54-403; Ga. L. 2002, p. 660, § 4; Ga. L. 2002, p. 1259, § 11.)

**The 2002 amendments.** — The first 2002 amendment, effective July 1, 2002, substituted “chief firefighter” for “chief fireman” near the middle of subsection (a). The second 2002 amendment, effective July 1, 2002, made identical changes.

JUDICIAL DECISIONS

**Cited** in *Irwin v. Torbert*, 204 Ga. 111, 49 S.E.2d 70 (1948).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 35A Am. Jur. 2d, Fires, § 5.

**8-2-52. Requiring owners to make alterations and additions; time of making inspections and reports.**

The owners of buildings referred to in this part shall make all alterations or additions necessary to comply with the requirements of this part. Inspections and reports required by Code Section 8-2-51 shall be made during the month of December of each year. (Ga. L. 1889, p. 168, § 4; Civil Code 1895, § 2625; Civil Code 1910, § 3154; Code 1933, § 54-405.)

**RESEARCH REFERENCES**

**ALR.** — Liability for personal injury by fire escape, 42 ALR 1111.

**8-2-53. Power of municipal authorities to extend coverage of part.**

The governing authority of any city may, by ordinance, provide that this part shall apply to all buildings within the city limits which are not used as private residences and which are three or more stories in height. (Ga. L. 1889, p. 168, § 3; Civil Code 1895, § 2624; Civil Code 1910, § 3153; Code 1933, § 54-404.)

**JUDICIAL DECISIONS**

**Cited** in *Irwin v. Torbert*, 204 Ga. 111, 49 S.E.2d 70 (1948).

**RESEARCH REFERENCES**

**ALR.** — Power to forbid or restrict repair of wooden building within fire limits, 56 ALR 878.

**8-2-54. Penalty.**

Any owner of a building more than two stories in height who fails to comply with the requirements of this part and who, after receiving the notice prescribed in Code Section 8-2-51, refuses or neglects to make the alterations specified in the written notice shall be guilty of a misdemeanor. (Ga. L. 1889, p. 168, § 5; Penal Code 1895, § 510; Penal Code 1910, § 511; Code 1933, § 54-9908.)



RESEARCH REFERENCES

**ALR.** — Liability for injury to person on business premises in consequence of passing through wrong doorway, 20 ALR 1147; 27 ALR 585; 42 ALR 1098.      What is a “factory” within statutes relating to safety and health of employees, 163 ALR 447.

Liability for personal injury by fire escape, 42 ALR 1111.

PART 4

BOILERS, PRESSURE VESSELS, AND WATER HEATERS

8-2-70 through 8-2-75.

Reserved. Repealed by Ga. L. 1984, p. 1227, § 2, effective July 1, 1984.

**Editor’s notes.** — For current provisions relating to safety standards for boilers and pressure vessels, see T. 34, Ch. 11. The former provisions of this part were based on Ga. L. 1969, p. 546, §§ 1-3; Ga. L. 1973, p. 503, §§ 1-4; Ga. L. 1974, p. 561, § 1.

PART 5

GLASS INSTALLATIONS

8-2-90. Definitions.

As used in this part, the term:

- (1) “Fabricator” means a person who fabricates, assembles, or glazes from component parts such structures or products commonly known as sliding glass doors, entrance doors, adjacent fixed glazed panels, storm doors, shower doors, bathtub enclosures, fixed glazed panels, or other glazed structures to be used or installed in hazardous locations.
- (2)(A) “Hazardous locations” means for the purpose of glazing:
  - (i) Glazing in ingress and egress doors, except wired glass in required fire doors and jalousies;
  - (ii) Glazing in fixed and sliding panels of sliding type doors (patio and mall type);
  - (iii) Glazing in storm doors;
  - (iv) Glazing in all unframed swinging doors;
  - (v) Glazing in shower and bathtub doors and enclosures;
  - (vi) Glazing, operable or inoperable, adjacent to a door in all buildings and within the same wall plane as the door whose nearest vertical edge is within 12 inches of the door in a closed position and whose bottom edge is less than 60 inches above the floor or walking surface;

(vii) Glazing in fixed panels having a glazed area in excess of nine square feet with the lowest edge less than 18 inches above the finish floor level or walking surface within 36 inches of such glazing. In lieu of safety glazing, such glazed panels may be protected with a horizontal member not less than one and one-half inches wide when located between 24 and 36 inches above the walking surface; or

(viii) All doors, windows, and mirrors on public buses and trains.

(B) The following products, materials, and uses shall not be included in the definition of the term "hazardous locations":

(i) Openings in doors through which a three-inch sphere is unable to pass;

(ii) Leaded glass panels where no individual piece of glass has an area greater than 30 square inches;

(iii) Glazing materials used as curved glass panels in revolving doors;

(iv) Commercial refrigerated cabinet glazed doors; or

(v) Faceted and decorative glass.

(3) "Installer" means those persons who or those concerns which install glazing materials or build structures containing glazing materials in hazardous locations.

(4) "Manufacturer" means a person who manufactures safety glazing material.

(5) "Safety glazing material" means any glazing material, such as tempered glass, laminated glass, wire glass, or rigid plastic, which meets the requirements of the USA Standard Z-97.1-1966 or such requirements as are or may be hereafter adopted by the Georgia Department of Labor and which are constructed, treated, or combined with other materials in such a manner as to minimize the likelihood of cutting and piercing injuries resulting from human contact with the glazing material. (Ga. L. 1970, p. 151, § 1; Ga. L. 1986, p. 1231, § 1.)

#### JUDICIAL DECISIONS

**Meaning of O.C.G.A. § 8-2-90** is to require safety glazing material when installing glass panels in entrance door, as well as when installing sliding glass doors and glass panels, since entrance doors are in and of themselves a "hazardous location." *Cornell v. Camellia Corp.*, 248 Ga. 449, 283 S.E.2d 264 (1981), appeal dismissed, 456 U.S. 901, 102 S. Ct. 1744, 72 L. Ed. 2d 157 (1982).

**O.C.G.A. § 8-2-90 did not serve to give defendant notice** of the dangers posed by the glass panels to either side of its hotel's entrance. *Wittenberg v. 450 Capitol Assocs.*, 207 Ga. App. 260, 427 S.E.2d 547 (1993).

**Cited in** *Moody v. Southland Inv. Corp.*, 126 Ga. App. 225, 190 S.E.2d 578 (1972).

**8-2-91. Products used in hazardous locations and containing glass or glazing product other than safety glazing material.**

It shall be unlawful, for use in the State of Georgia, knowingly to sell, fabricate, assemble, glaze, install, or consent to be installed any glazed structure, product, or material to be used in any hazardous location if said product, material, or structure contains any glass or glazing product other than safety glazing material. (Ga. L. 1970, p. 151, § 4.)

**Law reviews.** — For survey of developments in Georgia torts law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 247 (1981). For survey article on torts, see 34 Mercer L. Rev. 271 (1982).

**JUDICIAL DECISIONS**

**Ignorance of section not excuse.** — Fact that landlord is unaware that state law requires safety glazing materials in doors under O.C.G.A. § 8-2-91 is no defense, under O.C.G.A. § 1-3-6. *Cornell v. Camellia Corp.*, 248 Ga. 449, 283 S.E.2d 264 (1981), appeal dismissed, 456 U.S. 901, 102 S. Ct. 1744, 72 L. Ed. 2d 157 (1982).

**Liability of lessor of facilities.** — Sponsor of a performance at a public civic auditorium was not put on notice, statutory or

otherwise, that a glass door constituted a hazardous location by virtue of O.C.G.A. § 8-2-91 where all the sponsor did was to lease a building in which nonsafety glass had been lawfully utilized in its initial construction prior to passage of that section. *Zellers v. Theater of Stars, Inc.*, 171 Ga. App. 406, 319 S.E.2d 553 (1984).

**Cited in** *Camellia Corp. v. Cornell*, 162 Ga. App. 362, 291 S.E.2d 556 (1982).

**8-2-92. Marking of transparent glass or plastic doors in commercial or public places.**

Transparent glass or plastic doors located in commercial or public places which are situated in buildings open to the public must, in addition to use of safety glazing materials, be posted, painted, or otherwise marked in such a manner as to alert the public as to their presence. Such posting, painting, or marking shall also be required in those places glazed with nonsafety glazing materials prior to July 1, 1970. (Ga. L. 1970, p. 151, § 3.)

**JUDICIAL DECISIONS**

**Cited in** *Camellia Corp. v. Cornell*, 162 Ga. App. 362, 291 S.E.2d 556 (1982).

**8-2-93. Labeling lights made of safety glazing materials; using safety labels or identification on materials other than safety glazing materials.**

Any light which is made of safety glazing material and which is manufactured, distributed, imported, sold, or installed within the State of Georgia shall be permanently labeled by the manufacturer of the glazing material by etching or sand blasting, or by firing ceramic material on the glass; and such label shall be visible after glazing. The label shall identify the manufacturer



and the thickness and type of safety glazing material and shall state that it meets the requirements of USA Standard Z-97.1-1966 or such requirements as are or may be hereafter adopted by the Georgia Department of Labor. The use of such labeling or identification on materials other than safety glazing materials shall be a violation of this part. (Ga. L. 1970, p. 151, § 2.)

#### **8-2-94. Administration and enforcement of part by Commissioner of Labor; promulgation of rules and regulations by Commissioner.**

The Commissioner of Labor shall administer and enforce this part. He shall have the power and authority to adopt and promulgate such reasonable rules and regulations as shall be necessary in order that he might carry out the duties and responsibilities imposed upon him by this part and in order that the purposes and intent of this part shall be effectuated. (Ga. L. 1971, p. 901, § 1.)

#### **8-2-95. Penalty.**

Any person who violates any provision of this part shall be guilty of a misdemeanor. (Ga. L. 1970, p. 151, § 5.)

### **PART 6**

#### **ELEVATORS, DUMBWAITERS, ESCALATORS, MANLIFTS, AND MOVING WALKS**

**Administrative rules and regulations.** — Georgia, Georgia Department of Labor, Escalators and elevators, Official Compilation of Rules and Regulations of State of

Safety Engineering, Chapter 300-3-6.

### **OPINIONS OF THE ATTORNEY GENERAL**

**The Department of Labor is required to inspect “material lifts”** under the ANSI Standard governing vertical reciprocating conveyors. 1991 Op. Att’y Gen. U91-14.

#### **8-2-100. Definitions.**

As used in this part, the term:

- (1) “Alteration” means any change or addition to the equipment other than ordinary repairs or replacements.
- (2) “Commissioner” means the Commissioner of Labor.
- (3) “Department” means the Department of Labor.
- (4) “Dumbwaiter” means a hoisting and lowering mechanism which is equipped with a car which moves in guides in a substantially vertical direction, the floor area of which does not exceed nine square feet, the total inside height of which, whether or not provided with fixed or removable shelves, does not exceed four feet, the capacity of which does

not exceed 500 pounds, and the use of which is exclusively for carrying materials. Such term includes a power dumbwaiter and a hand dumbwaiter.

(5)(A) “Elevator” means a hoisting and lowering mechanism designed to carry passengers or authorized personnel and equipped with a car which moves in fixed guides and serves two or more fixed landings.

(B) Except as specifically provided in subsection (a) of Code Section 8-2-102, “elevator” also means a freight elevator, gravity elevator, hand elevator, inclined elevator, multideck elevator, observation elevator, passenger elevator, power elevator, electric elevator, hydraulic elevator, direct-plunger hydraulic elevator, electrohydraulic elevator, maintained pressure hydraulic elevator, roped-hydraulic elevator, private residence elevator, and sidewalk elevator.

(6) “Enforcement authority” means the Commissioner, officers, and inspectors of the department authorized to enforce the provisions of this part and local inspectors authorized to enforce the provisions of this part.

(7) “Escalator” means a power driven, inclined, continuous stairway used for raising or lowering passengers.

(8) “Hand dumbwaiter” means a dumbwaiter driven by manual power, serving more than two consecutive stories, whose capacity exceeds 20 pounds and whose car platform area exceeds two square feet.

(9) “Hand elevator” means an elevator utilizing manual power to move the car.

(10) “Hoistway” means a shaftway or an opening through a building or structure for the travel of elevators, dumbwaiters, or material lifts, extending from the pit floor to the roof or floor above.

(11) “Manlift” means a device consisting of a power driven endless belt moving in one direction only which is provided with steps or platforms and handholds attached to it for the transportation of personnel from floor to floor.

(12) “Moving walk” means a type of passenger-carrying device on which passengers stand or walk and in which the passenger-carrying surface remains parallel to its direction of motion and is uninterrupted.

(13) “Power dumbwaiter” means a dumbwaiter driven by the application of energy other than hand or gravity.

(14) “Power freight elevator” means an elevator used primarily for carrying freight, utilizing energy other than gravity or hand to move the car and on which only the operator and the persons necessary for unloading and loading the freight are permitted to ride.

(15) “Power passenger elevator” means an elevator used primarily to carry persons other than the operator and persons necessary for loading

and unloading and utilizing energy other than gravity or hand to move the car. (Code 1981, § 8-2-100, enacted by Ga. L. 1984, p. 1244, § 1.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 26 Am. Jur. 2d, Elevators and Escalators, § 1.

#### **8-2-101. Registration; maintenance; alterations.**

(a) Prior to January 1, 1986, the owner or lessee of every existing elevator, escalator, manlift, moving walk, and dumbwaiter shall register with the department or local enforcement authority each such elevator, escalator, manlift, moving walk, or dumbwaiter owned or operated by him, giving type, rated load and speed, name of manufacturer, its location and the purpose for which it is used, and such other information as the department or local enforcement authority may require. Such registration shall be made on a form to be furnished by the department or local enforcement authority on request. All elevators, escalators, manlifts, moving walks, and dumbwaiters erected or placed in service after January 1, 1986, shall be inspected before being placed in service and shall be registered within 15 days after they are completed and placed in service.

(b) Every elevator, dumbwaiter, manlift, moving walk, and escalator shall be maintained by the owner or lessee in a safe operating condition and in conformity with the rules and regulations specified by subsection (b) of Code Section 8-2-104.

(c) Before any alteration can be made to any elevator, escalator, manlift, moving walk, or dumbwaiter already placed in service, the owner or lessee shall be required to notify the enforcement authority of any such alteration. The enforcement authority shall be authorized to conduct an inspection after any such alteration. (Code 1981, § 8-2-101, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1985, p. 221, § 1.)

#### **8-2-102. Inspections.**

(a)(1) Power passenger elevators, power freight elevators, escalators, manlifts, and moving walks shall be inspected once during each six-month period.

(2) Hand elevators and power and hand dumbwaiters shall be inspected once during each 12 month period.

(b) Inspections and installations shall be made in accordance with the standards set forth in Part "X" of ANSI A17.1-1984, the American National Standard Practice for Inspection of Elevators, Escalators and Moving Walks Inspector's Manual ANSI A17.2, the Safety Standards for Manlifts ANSI



A90.1-1976, the Safety Standard for Construction Hoists ANSI A10.4-1981 and ANSI A10.5-1981, the Safety Standard for Conveyors and Related Equipment ANSI B20.1-1984, or the latest revised rules and regulations adopted by the Commissioner. Any inspections performed under these codes shall cover the hoistway, associated equipment rooms, and access thereto, and shall include lobby smoke detectors.

(c) A report of any inspection required by this Code section shall be filed with the department if the inspection is made by a state enforcement authority or with the local governing authority if the inspection is made by a local enforcement authority. Copies of the reports for new installations shall also be filed with the state fire marshal for his information. Such reports shall be made within ten days after the inspection has been completed, on forms prescribed by the Commissioner or the local enforcement authority, and shall indicate whether the elevator, escalator, manlift, moving walk, or dumbwaiter is safe and whether it meets the applicable rules and regulations prescribed pursuant to subsection (b) of Code Section 8-2-104. After any such report is filed, the enforcement authority may require additional inspections to assure that any such elevator, escalator, manlift, moving walk, or dumbwaiter meets such rules and regulations.

(d) If any inspection report indicates that an elevator, escalator, manlift, moving walk, or dumbwaiter is in an unsafe condition which if continually operated may endanger lives or property, then the enforcement authority may, at its discretion, require the owner or lessee to discontinue the use thereof until it has been made safe and in conformity with the rules and regulations specified in subsection (b) of Code Section 8-2-104.

(e) Elevator contractors who perform installations, alterations, repairs, or modifications on elevators, escalators, power freight elevators, moving walks, manlifts, or dumbwaiters, including the hoistways and machine rooms, shall be exempt from the requirements of Code Section 43-14-8 and Code Section 43-14-8.1.

(f) Private residence elevators shall be exempt from mandatory periodic inspections but shall be required to have an initial construction inspection as provided in the rules and regulations of the Commissioner. At the request of the owner or user of a private residence elevator, an inspection may be performed by the department and an inspection report issued. The department shall charge the person requesting the report a fee as set by the Commissioner to cover actual expenses of the inspection. (Code 1981, § 8-2-102, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1987, p. 1470, § 1; Ga. L. 2001, p. 4, § 8.)

### **8-2-103. Operating permits.**

(a) An operating report shall be issued by the enforcement authority if the inspection report indicates that the elevator, escalator, manlift, moving

walk, or dumbwaiter complies with the applicable rules and regulations prescribed pursuant to subsection (b) of Code Section 8-2-104 and upon payment of a permit fee. Such permits shall be valid for a period of 12 months.

(b) No elevator, escalator, manlift, moving walk, or dumbwaiter shall be operated by the owner or lessee thereof unless a valid operating permit, or a limited operating permit when permitted by the rules and regulations of the Commissioner, has been issued.

(c) The operating permit shall indicate whether it is issued for an elevator, escalator, manlift, moving walk, or dumbwaiter, state the rated load and speed and, in the case of an elevator, state whether the usage is for passengers or freight. The operating permit shall be posted either conspicuously in the car of an elevator or on the premises. The operating permit for an escalator, manlift, moving walk, or a dumbwaiter shall be posted on the premises.

(d) If the enforcement authority has reason to believe that any owner or lessee to whom an operating permit has been issued is not complying with the applicable rules and regulations specified in subsection (b) of Code Section 8-2-104, it shall so notify such owner or lessee and shall give notice of a date for a hearing thereon to such owner or lessee. If, after such hearing, it shall find that such owner or lessee is not complying with such rules and regulations, it shall revoke such permit and require the owner or lessee to discontinue the use of such elevator, escalator, manlift, moving walk, or power dumbwaiter. (Code 1981, § 8-2-103, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1987, p. 1470, § 2.)

#### **8-2-104. Employment of inspectors; inspection fees; inspection rules and regulations.**

(a) The Commissioner shall be authorized to employ inspectors to carry out the provisions of this part. The Commissioner shall also be authorized to certify other qualified persons to carry out the provisions of this part, including technically competent individuals of any company licensed to insure and insuring elevators in this state and technically competent individuals of a regularly established elevator inspection service. The Commissioner shall prescribe the qualifications, authority, functions, and duties of such inspectors.

(b)(1)(A) The Commissioner shall by rules and regulations prescribe various inspection fees and operating permit fees necessary to enable the state and local enforcement authorities to carry out the provisions of this part.

(B) The owners and users of elevators, dumbwaiters, escalators, manlifts, and moving walks which are inspected by certified inspectors

in private business or with private corporations shall be exempt from the payment to the state or local enforcement authorities of the inspection fees provided in subparagraph (A) of this paragraph.

(2) Elevators, dumbwaiters, escalators, manlifts, and moving walks subject to operating permit inspections by private inspectors shall be inspected within 60 calendar days following the required reinspection date. Inspections not performed within this 60 calendar day period shall result in a civil penalty of \$500.00 for each elevator, dumbwaiter, escalator, manlift, or moving walk not inspected.

(3) Inspection fees due on elevators, dumbwaiters, escalators, manlifts, and moving walks subject to inspection by the chief or deputy inspectors or operating permit fees due from inspections performed by private inspectors shall be paid within 60 calendar days of completion of such inspections. Inspection fees or operating fees unpaid within 60 calendar days shall bear interest at the rate of 1.5 percent per month or any fraction of a month. Interest shall continue to accrue until all amounts due, including interest, are received by the Commissioner.

(4) The Commissioner may waive the collection of the penalties and interest assessed in paragraphs (2) and (3) of this subsection when it is reasonably determined that the delays in inspection or payment were unavoidable or due to the action or inaction of the department.

(c) The American National Standard Safety Code for elevators, dumbwaiters, escalators, and moving walks ANSI A17.1-1984 and the Safety Standards for Manlifts ANSI A90.1-1976 are adopted as rules and regulations of the Department of Labor for the purposes of this part until otherwise amended by rules and regulations of the Commissioner.

(d) In addition to the rules and regulations adopted pursuant to subsections (b) and (c) of this Code section, the Commissioner shall be authorized to adopt such rules and regulations as may be reasonably necessary to carry out the provisions of this part.

(e) The Commissioner shall also have the power in any particular case to grant exceptions and variations from the literal requirements of the rules and regulations adopted pursuant to subsection (c) of this Code section. Such exceptions and variations shall be granted only in any particular case where it is clearly evident that they are necessary to prevent undue hardship or where the existing conditions prevent compliance with the literal requirements of the rules and regulations. In no case shall any exception or variation be granted unless, in the opinion of the Commissioner, reasonable safety will be secured thereby. (Code 1981, § 8-2-104, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1985, p. 221, § 2; Ga. L. 1987, p. 1470, § 3; Ga. L. 1991, p. 258, § 1; Ga. L. 1992, p. 6, § 8; Ga. L. 2004, p. 631, § 8.)



**The 2004 amendment**, effective May 13, 2004, part of an Act to revise, modernize, and correct the Code, substituted “ANSI A90.1-1976” for “ANSI A90.1a-1976” near the middle of subsection (c).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1991, “subparagraph

(A) of this paragraph” was substituted for “subparagraph (A) of paragraph (1)” near the end of subparagraph (b)(1)(B), and “Commissioner” was substituted for “Commission” at the beginning of paragraph (b)(4).

### JUDICIAL DECISIONS

**Cited in** Millar Elevator Serv. Co. v. O’Shields, 222 Ga. App. 456, 475 S.E.2d 188 (1996).

### 8-2-105. Local government regulation and enforcement.

(a) The governing body of any municipality or county which adopts at least the minimum rules and regulations relative to inspections and safety standards for elevators, escalators, manlifts, moving walks, and dumbwaiters as provided in subsection (b) of Code Section 8-2-102 and subsection (c) of Code Section 8-2-104 shall have the power:

(1) To adopt by ordinance or resolution any reasonable provisions for the enforcement of such local standards adopted applicable to elevators, escalators, manlifts, moving walks, and dumbwaiters, including procedural requirements, provisions for hearings, provisions for appeals from decisions of local inspectors, and any other provisions or procedures necessary to the proper administration and enforcement of the requirements of such local standards;

(2) To provide for inspection of buildings or similar structures to ensure compliance with the local standards;

(3) To employ inspectors, including chief and deputy inspectors, and any other personnel necessary for the proper enforcement of such standards, provided that such inspectors meet the minimum qualifications of state inspectors and are certified by the Commissioner pursuant to subsection (a) of Code Section 8-2-104;

(4) To contract with other municipalities or counties adopting at least state minimum standards, or with the state, to administer such standards and to provide inspection and enforcement personnel and services necessary to ensure compliance with the standards; and

(5) To contract with any other county or municipality whereby the parties agree that the inspectors of each contracting party may have jurisdiction to enforce the local standards within the boundaries of the other contracting party.

(b) When a local enforcement authority conducts an inspection or issues an operating permit as provided in this part, any inspection fee or operating

permit fee due shall be paid to the municipality or county employing the enforcement authority. (Code 1981, § 8-2-105, enacted by Ga. L. 1984, p. 1244, § 1.)

**8-2-106. Reporting of accidents; removal from service of equipment involved in accident.**

(a) The owner or lessee shall report, by telephone, to the enforcement authority on the same day or by noon on the next work day, excluding state holidays and weekends, all elevator, escalator, manlift, moving walk, or power dumbwaiter related accidents involving personal injury or death. The owner or lessee shall also provide a written report of this accident within seven days.

(b) The owner or lessee shall report, in writing, to the enforcement authority within seven days, excluding state holidays and weekends, all elevator, escalator, manlift, moving walk, or power dumbwaiter related accidents involving structural damage to the elevator, escalator, manlift, moving walk, or power dumbwaiter.

(c) Any elevator, escalator, manlift, moving walk, or power dumbwaiter involved in an accident described in subsection (a) or (b) of this Code section shall be removed from service at the time of the accident. The equipment shall not be repaired, altered, or placed back in service until inspected by a certified inspector for the enforcement authority. (Code 1981, § 8-2-106, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1987, p. 1470, § 4.)

**Law reviews.** — For note, “Now You See It, Now You Don’t: A Georgia Perspective on Spoliation of Evidence,” see 17 Ga. St. U. L. Rev. 1163 (2001).

**JUDICIAL DECISIONS**

**Summary judgment in favor of elevator company not warranted.** — In an action arising from an elevator accident, summary judgment in favor of defendant elevator company was not warranted where there was inconsistent evidence as to the identity of the elevator at issue and as to whether the elevator may have been subjected to maintenance procedures after the accident and before the required state inspection. *Lane v. Montgomery Elevator Co.*, 225 Ga. App. 523, 484 S.E.2d 249 (1997).

**Evidence of store’s failure to submit post-accident report admissible.** — In an action to recover for injuries received while attempting to board a store’s elevator, evidence of the store’s failure to submit a post-accident report to the Department of Labor was admissible. *Ruben’s Richmond Dep’t Store v. Walker*, 227 Ga. App. 867, 490 S.E.2d 536 (1997).

**Cited in** *Peterson Properties Corp. v. Finch*, 235 Ga. App. 86, 508 S.E.2d 463 (1998).

**RESEARCH REFERENCES**

**ALR.** — Liability of building owner, lessee, or manager for injury or death resulting from use of automatic passenger elevator, 99 ALR5th 141.

**8-2-107. Penalties.**

(a) The installation, alteration, maintenance, and operation of the facilities and equipment regulated by or pursuant to the provisions of this part affect the public interest, and such regulation is necessary for the protection of the public health, safety, and welfare. Therefore, violations of this part or of rules and regulations adopted by or pursuant to this part are a public nuisance, harmful to the public health, safety, and welfare; and, in addition to other remedies provided by law, the actions of the Commissioner, the department, or any local enforcement authority under this part shall be enforceable by injunction properly applied for by the Commissioner or any other enforcement authority in any court of Georgia having jurisdiction over the defendant.

(b)(1) Any person, firm, partnership, or corporation which violates this part shall be guilty of a misdemeanor. Each day on which a violation occurs shall constitute a separate offense.

(2) In addition to the penalty provisions in subsection (a) of this Code section and paragraph (1) of this subsection, the Commissioner shall have the power, after notice and hearing, to levy civil penalties as prescribed in the rules and regulations of the department in an amount not to exceed \$5,000.00 upon any person, firm, partnership, or corporation failing to adhere to the requirements of this part and the rules and regulations promulgated under this part. The imposition of a penalty for a violation of this part or the rules and regulations promulgated under this part shall not excuse the violation or permit it to continue. (Code 1981, § 8-2-107, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1995, p. 370, § 1.)

**JUDICIAL DECISIONS**

**Pleadings in civil action.** — Even though it appeared that a homeowner's operation of an elevator in violation of departmental rules and regulations gave rise to a public nuisance under O.C.G.A. § 8-2-107(a), because plaintiffs did not inform the homeowner that they were relying on a

nuisance theory until they moved for a directed verdict at the close of the evidence, the court did not err in denying their motion for directed verdict on a ground that it was not timely asserted. *Childers v. Monson*, 241 Ga. App. 70, 524 S.E.2d 326 (1999).

**8-2-108. Appeals from orders or acts of inspectors.**

(a) Any person aggrieved by an order or an act of an inspector under this chapter may, within 15 days of notice thereof, appeal from such order or act to the Commissioner who shall, within 30 days thereafter, issue an appropriate order either approving or disapproving said order or act. A copy of such order by the Commissioner shall be given to all interested parties.



(b) This part, as it applies to the Commissioner and the department, shall be governed by Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1981, § 8-2-108, enacted by Ga. L. 1984, p. 1244, § 1.)

**8-2-109. Consultation with Governor’s Employment and Training Council; consultations with others; creation of committees.**

(a) For the purpose of assisting the Commissioner in the adoption of rules and regulations and in carrying out the provisions of this part, the Commissioner shall consult with the Governor’s Employment and Training Council provided for in Code Section 34-14-1.

(b) The Commissioner shall be authorized to consult with persons knowledgeable in the areas of construction, use, or safety of conveyances or facilities covered by this part and to create committees composed of such consultants and members of the Governor’s Employment and Training Council to assist the Commissioner in carrying out his duties under this part. (Code 1981, § 8-2-109, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1985, p. 221, § 3; Ga. L. 1989, p. 443, § 1.)

**8-2-109.1. Exceptions from part; audit of compliance of local governmental units.**

(a) This part shall not apply to elevators located on vehicles operating under the rules of other state or federal authorities and used for carrying passengers or freight.

(b) This part shall not apply to any single-seat, single-passenger chairlift located in a building owned and operated by an incorporated or unincorporated nonprofit organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes.

(c) Any county, municipality, or other political subdivision which adopts the minimum rules and regulations as provided in Code Section 8-2-105 shall be audited on a semiannual basis for compliance by the Department of Labor; and any laws, ordinances, or resolutions in conflict with this part shall be void and of no effect. (Code 1981, § 8-2-110, enacted by Ga. L. 1984, p. 1244, § 1; Code 1981, § 8-2-109.1, as redesignated by Ga. L. 1985, p. 149, § 8; Ga. L. 1987, p. 1470, § 5; Ga. L. 1995, p. 1046, § 1.)

**Editor’s notes.** — Owing to the duplication of Code section numbers with the currently existing Code Section 8-2-110, this

Code section was redesignated as Code Section 8-2-109.1 by Ga. L. 1985, p. 149, § 8.

## ARTICLE 2

## FACTORY BUILT BUILDINGS AND DWELLING UNITS

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 13 Am. Jur. 2d, Buildings, §§ 20, 21. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, §§ 7, 8.

**ALR.** — What is “temporary” building or structure within meaning of restrictive covenant, 49 ALR4th 1018.

## PART 1

## UNITS DESIGNED TO BE AFFIXED TO FOUNDATIONS OR EXISTING BUILDINGS

**Editor’s notes.** — Ga. L. 1982, p. 1637, § 1 rewrote this part. Section 2 of the 1982 Act provided that the Act was to become effective upon approval by the Governor or upon its becoming law without his approval. The

Act was signed on, and thus became effective on, April 16, 1982, although the Code itself did not become effective until November 1, 1982, as provided in Code Section 1-1-9.

**8-2-110. Legislative findings and purpose.**

The General Assembly finds that, in an effort to meet the building needs within the state, the private construction industry has developed mass production techniques which can substantially reduce construction costs and that the mass production of buildings presents unique problems with respect to the establishment of uniform health and safety standards and inspection procedures. The General Assembly further finds that, by minimizing the problems of standards and inspection procedures, it is demonstrating its intention to encourage the reduction of building construction costs and to make building and home ownership more feasible for all residents of the state. (Ga. L. 1971, p. 364, § 1; Code 1981, § 8-2-110; Ga. L. 1982, p. 1637, § 1.)

## OPINIONS OF THE ATTORNEY GENERAL

**Scope of part.** — O.C.G.A. §§ 8-2-110 through 8-2-119 do not implicitly repeal the authority or responsibilities of other state

agencies which may also relate to industrialized buildings. 1983 Op. Att’y Gen. No. 83-15.

**8-2-111. Definitions.**

As used in this part, the term:

- (1) “Commissioner” means the commissioner of community affairs.
- (2) “Component” means any assembly, subassembly, or combination of parts for use as a part of a building, which may include structural, electrical, plumbing, mechanical, and fire protection systems and other systems affecting health and safety.

(3) “Industrialized building” means any structure or component thereof which is wholly or in substantial part made, fabricated, formed, or assembled in manufacturing facilities for installation or assembly and installation on a building site and has been manufactured in such a manner that all parts or processes cannot be inspected at the installation site without disassembly, damage to, or destruction thereof.

(4) “Installation” means the assembly of an industrialized building on site and the process of affixing the industrialized building, component, or system to land, a foundation, footings, or an existing building.

(5) “Local government” means a county or municipality of this state.

(6) “Manufacture” means the process of making, fabricating, constructing, forming, or assembling a product from raw, unfinished, or semifinished materials.

(7) “Site” means the entire tract, subdivision, or parcel of land on which the industrialized building is installed.

(8) “System” means structural, plumbing, mechanical, electrical, or fire safety elements, materials, or components used separately or combined for use in a building. (Ga. L. 1971, p. 364, § 2; Ga. L. 1980, p. 1316, § 13; Code 1981, § 8-2-111; Ga. L. 1982, p. 1637, § 1; Ga. L. 1992, p. 1158, § 1.)

#### JUDICIAL DECISIONS

**Manufactured home.** — Trial court did not err in enjoining the owner from building a manufactured home on a permanent foundation at a site for residential development, as the home unquestionably met the description of a modular home, and therefore, the owner violated the restrictive cove-

nant that prohibited the construction of modular homes in that residential area. *Vester v. Banks*, 257 Ga. App. 26, 570 S.E.2d 586 (2002).

**Cited in** *Hill v. Duncan*, 249 Ga. App. 342, 548 S.E.2d 83 (2001).

#### **8-2-112. Inspection and approval of industrialized buildings by commissioner or local government; modifications prohibited; costs; adoption of rules.**

(a)(1) An industrialized building manufactured after the effective date of the rules adopted pursuant to Code Section 8-2-113 which is sold, offered for sale, or installed within this state must bear the insignia of approval issued by the commissioner.

(2) This Code section shall not apply to industrialized buildings which are inspected and approved by a local government which has jurisdiction at the site of installation and which are inspected at the place of and during the time of manufacture in accordance with standards established by the commissioner. The cost of the inspection shall be borne by the manufacturer. The commissioner shall be notified of the installation of



all such buildings in a manner as the commissioner shall prescribe by rule.

(b)(1) All industrialized buildings bearing an insignia of approval issued by the commissioner pursuant to this part shall be held to comply with the requirements of all ordinances or regulations enacted by any local government which are applicable to the manufacture or installation of such buildings. The determination by the commissioner of the scope of such approval is final.

(2) No industrialized building or component bearing an insignia of approval issued by the commissioner pursuant to this part shall be in any way modified prior to or during installation unless approval is first obtained from the commissioner.

(3) Industrialized buildings which have been inspected and approved by a local government agency shall not be modified prior to or during installation unless approval for the modification is first obtained from the local government agency.

(c) The commissioner by rule shall establish a schedule of fees to pay the costs incurred for the work related to administration and enforcement of this Code section.

(d) All rules and regulations promulgated by the commissioner under this part shall be adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Ga. L. 1971, p. 364, § 3; Ga. L. 1980, p. 1316, § 13; Code 1981, § 8-2-112; Ga. L. 1982, p. 1637, § 1; Ga. L. 1983, p. 3, § 6; Ga. L. 1984, p. 22, § 8.)

### JUDICIAL DECISIONS

**State approval precludes local government inspection.** — Approval of a factory-built housing unit by the state precludes the right of a local government to condition its approval of a unit upon its own inspection pursuant to O.C.G.A. § 8-2-112(a)(3) (now paragraph (a)(2)). *Clayton County v. Otis Pruitt Homes, Inc.*, 250 Ga. 505, 299 S.E.2d 721 (1983).

Once state approval is obtained the right of a local government to inspect and approve that particular housing is preempted. *Clayton County v. Otis Pruitt Homes, Inc.*, 250 Ga. 505, 299 S.E.2d 721 (1983).

**Cited in** *Hill v. Duncan*, 249 Ga. App. 342, 548 S.E.2d 83 (2001).

### OPINIONS OF THE ATTORNEY GENERAL

**Disposition of fees.** — The provisions of O.C.G.A. § 8-2-112 do not authorize the department to utilize all moneys collected in

fees for the administration and enforcement of that section. 1983 Op. Att'y Gen. No. 83-15.

**8-2-113. Promulgation of rules and regulations by commissioner; delegation of inspection authority; rules and regulations continued in full force and effect; advisory committee; powers of commissioner; training programs.**

(a) The commissioner shall promulgate rules and regulations to interpret and make specific the provisions of this part. These rules and regulations shall include provisions imposing requirements reasonably consistent with recognized, nationally accepted standards. The commissioner shall adopt other rules and regulations necessary to carry out the provisions of this part.

(b) The commissioner shall enforce the provisions of this part and the rules and regulations adopted pursuant hereto, except that inspection authority may be delegated to a local government agency, an approved inspection agency, or an agency of another state in such manner as the commissioner shall determine.

(c) The rules promulgated by the State Building Administrative Board pursuant to an Act providing for certification of factory built housing and for the establishment of uniform health and safety standards and inspection procedures for factory built housing, approved April 1, 1971 (Ga. L. 1971, p. 364), as amended, shall continue in full force and effect until the effective date of rules adopted pursuant to this part. Units approved under the provisions of the State Building Administrative Board's rules shall be deemed to comply with the requirements of rules promulgated pursuant to this part.

(d) The commissioner shall consult with and obtain the advice of an advisory committee on industrialized buildings in the drafting, promulgation, and revision of rules and regulations to be adopted for the purpose of this part. The committee shall consist of 11 members appointed by the commissioner and approved by the Governor to serve at the commissioner's pleasure. Members of said committee shall consist of technically qualified, interested, and affected persons appointed by the commissioner from the following professional, technical, and occupational fields:

- (1) One member shall be associated with the practice of architecture;
- (2) One member shall be associated with the practice of structural engineering;
- (3) One member shall be associated with building code enforcement;
- (4) One member shall be associated with the practice of mechanical engineering or contracting;
- (5) One member shall be associated with the practice of electrical engineering or contracting;

- (6) One member shall be from the industrialized building industry;
  - (7) One member shall be a member of a municipal governing body;
  - (8) One member shall be a member of the governing body of a county;
  - (9) One member shall be associated with the industrialized building evaluation-inspection service;
  - (10) One member shall be from a regional development center; and
  - (11) One member shall be appointed from any state agency actively involved with housing.
- (e) The advisory committee shall meet on call by the commissioner, and the members of the advisory committee shall be reimbursed for any reasonable and necessary travel and other expenses actually incurred by them while attending meetings of said committee.
- (f) Recommendations from this committee shall be subject to approval by an advisory committee appointed by the commissioner pursuant to Code Section 8-2-24.
- (g) The commissioner may set qualifications and employ and fix the compensation of any state inspectors or other employees necessary to carry out the provisions of this part. The commissioner may authorize such state inspectors to travel inside or outside the state for the purpose of inspecting industrialized buildings and manufacturing facilities to determine compliance of such structures with standards promulgated pursuant to this part. Upon the request of a local government, the commissioner may authorize a state inspector to visit any site of installation of industrialized buildings for the purpose of inspecting such installation on behalf of the local government requesting such service. The cost of any inspections made pursuant to this subsection shall be borne by the manufacturer in such manner as the commissioner may prescribe by rule.
- (h) The commissioner may establish necessary training programs for a local government enforcement agency and inspection agency personnel. (Ga. L. 1971, p. 364, § 4; Ga. L. 1980, p. 1316, § 13; Code 1981, § 8-2-113; Ga. L. 1982, p. 1637, § 1; Ga. L. 1989, p. 1317, § 6.2; Ga. L. 2004, p. 631, § 8.)

**The 2004 amendment**, effective May 13, 2004, part of an Act to revise, modernize, and correct the Code, substituted “inside or outside” for “within or without”, in the second sentence of subsection (g).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1986, a hyphen was

deleted twice between “factory” and “built” in the first sentence of subsection (c).

**Editor’s notes.** — The State Building Administrative Board, referred to in subsection (c), was created by Ga. L. 1969, p. 546, § 2. That Act was repealed by Ga. L. 1980, p. 1316, § 14. All functions previously exer-



cised by the State Building Administrative Board with regard to factory built housing were transferred to the commissioner of community affairs by Ga. L. 1980, p. 1316, § 13.

**Administrative rules and regulations.** — Administration, Official Compilation of Rules and Regulations of State of Georgia, Department of Community Affairs, Industrialized Building, Planning and Environmental Management Division, Chapter 110-2-1.

Definitions, Official Compilation of Rules and Regulations of State of Georgia, Department of Community Affairs, Industrialized Building, Planning and Environmental Management Division, Chapter 110-2-2.

Adoption of Codes, Official Compilation of Rules and Regulations of State of Georgia, Department of Community Affairs, Industrialized Building, Planning and Emergency Management Division, Chapter 110-2-3.

Local Authority, Official Compilation of Rules and Regulations of State of Georgia, Department of Community Affairs, Industrialized Building, Planning and Emergency Management Division, Chapter 110-2-4.

Agency Requirements, Official Compilation of Rules and Regulations of State of Georgia, Department of Community Affairs, Industrialized Building, Planning and Emergency Management Division, Chapter 110-2-5.

Agency Responsibilities, Official Compilation of Rules and Regulations of State of Georgia, Department of Community Affairs, Industrialized Building, Planning and Emergency Management Division, Chapter 110-2-6.

Manufacturer Requirements, Official Compilation of Rules and Regulations of

State of Georgia, Department of Community Affairs, Industrialized Building, Planning and Emergency Management Division, Chapter 110-2-7.

Building System, Model Plan, and Installation Requirements, Official Compilation of Rules and Regulations of State of Georgia, Department of Community Affairs, Industrialized Building, Planning and Emergency Management Division, Chapter 110-2-8.

Quality Control Requirements for Manufacturing Facilities, Official Compilation of Rules and Regulations of State of Georgia, Department of Community Affairs, Industrialized Building, Planning and Emergency Management Division, Chapter 110-2-9.

State Insignia and Data Plate Requirements, Official Compilation of Rules and Regulations of State of Georgia, Department of Community Affairs, Industrialized Building, Planning and Emergency Management Division, Chapter 110-2-10.

Certification of Existing Industrialized Building, Planning and Environmental Management Division, Official Compilation of Rules and Regulations of State of Georgia, Department of Community Affairs, Industrialized Building, Planning and Emergency Management Division, Chapter 110-2-11.

Schedule of Fees, Official Compilation of Rules and Regulations of State of Georgia, Department of Community Affairs, Industrialized Building, Planning and Emergency Management Division, Chapter 110-2-13.

Appeals, Official Compilation of Rules and Regulations of State of Georgia, Department of Community Affairs, Industrialized Building, Planning and Emergency Management Division, Chapter 110-2-14.

## OPINIONS OF THE ATTORNEY GENERAL

**Advisory committee may be composed of building industry representatives.** — There is no conflict of interest when advisory committees to the Commissioner of Community Affairs are composed of building industry

representatives who assist the commissioner in developing rules and regulations for the building industry. 1983 Op. Att'y Gen. No. 83-50.

**8-2-114. Approval by commissioner of industrialized building meeting standards prescribed by other states; delegation of inspection authority.**

(a) If the commissioner determines that the standards for construction and inspection of industrialized buildings prescribed by statute or rule of another state are reasonably consistent with the standards developed by the commissioner under this part and that such standards are actually enforced by such other state, the commissioner may provide by rule that industrialized buildings approved by such other state are approved by the commissioner.

(b) The commissioner may assign inspection authority contained in this part by contract with political subdivisions of the State of Georgia, private persons, corporations, and associations. (Ga. L. 1971, p. 364, § 5; Code 1981, § 8-2-114; Ga. L. 1982, p. 1637, § 1.)

**8-2-115. Appeals from applications of rules and regulations.**

(a) Any person aggrieved by the application of any rule or regulation to such person, which rule or regulation is promulgated pursuant to this part, may appeal such application of such rule or regulation. Any such appeal shall be made to an appeals committee appointed by the commissioner which shall consist of not less than three nor more than five members.

(b) The commissioner may promulgate rules and regulations pertaining to the hearing of appeals consistent with the provisions of this Code section.

(c) A final decision of an appeals committee of the commissioner may be appealed in the same manner specified in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," to the same courts with the same rights and limitations specified in such chapter. (Ga. L. 1971, p. 364, § 6; Code 1981, § 8-2-115; Ga. L. 1982, p. 1637, § 1; Ga. L. 1983, p. 3, § 6.)

**8-2-116. Injunctive relief.**

The commissioner may obtain injunctive relief from the superior court to enjoin the sale, delivery, or installation or to require the inspection, repair, or removal of an industrialized building upon an affidavit specifying the manner in which the industrial building does not conform to the requirements of this part or to rules and regulations promulgated pursuant to this part. In order to avail himself of the remedies provided for in this Code section, it shall not be necessary for the commissioner to allege or to prove the absence of an adequate remedy at law. (Ga. L. 1971, p. 364, § 7; Code 1981, § 8-2-116; Ga. L. 1982, p. 1637, § 1; Ga. L. 1983, p. 3, § 6; Ga. L. 1992, p. 1158, § 2.)

**8-2-117. Civil cause of action against manufacturers, installers, or dealers of industrialized buildings; damages, costs, and attorney's fees.**

Notwithstanding any other remedy at law, a person who suffers an injury to his person or property or to his person and property as a result of a violation of this part or rules and regulations adopted pursuant hereto shall have a cause of action against the manufacturer, installer, or dealer, or any combination thereof, of the industrialized building causing such injury. Any award may include damages and the cost of litigation, including reasonable attorney's fees. (Ga. L. 1971, p. 364, § 8; Code 1981, § 8-2-117; Ga. L. 1982, p. 1637, § 1; Ga. L. 1992, p. 1158, § 3.)

**8-2-117.1. Cease and desist orders and penalties for violations of part; appeals.**

Whenever the commissioner has reason to believe that any person is or has been violating provisions of this part, the commissioner may issue and deliver to such person an order to cease and desist such violation. In addition, the commissioner may impose a penalty not to exceed \$1,000.00 for each day the violation exists. A separate violation shall be deemed to have occurred with respect to each industrialized building or component involved. Decisions made pursuant to this Code section may be appealed as provided for in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1981, § 8-2-117.1, enacted by Ga. L. 1992, p. 1158, § 4.)

**8-2-118. Penalty; separate violations.**

A person who violates any of the provisions of this part or any rule or regulation adopted pursuant to this part shall be guilty of a misdemeanor. A separate violation shall be deemed to have occurred with respect to each industrialized building or component involved. (Ga. L. 1971, p. 364, § 9; Code 1981, § 8-2-118, enacted by Ga. L. 1982, p. 1637, § 1; Ga. L. 1997, p. 143, § 8.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Scope of part.** — O.C.G.A. §§ 8-2-110 through 8-2-119 do not implicitly repeal the authority or responsibilities of other state agencies which may also relate to industrialized buildings. 1983 Op. Att'y Gen. No. 83-15.

**Mobile home as industrialized building.** — O.C.G.A. § 8-2-118 constitutes a total bar to considering a mobile home as an industrialized building. 1983 Op. Att'y Gen. No. 83-15.



**8-2-119. Applicability of part.**

The provisions of this part shall not apply to Part 2 of this article relating to manufactured homes. (Ga. L. 1971, p. 364, § 10; Code 1981, § 8-2-119, enacted by Ga. L. 1982, p. 1637, § 1; Ga. L. 1983, p. 3, § 6.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Federal preemption.** — The National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., does not preempt O.C.G.A. Pt. 1, Ch. 2, T. 8, but may preempt certain

other portions of the Georgia statute dealing with factory built buildings and dwelling units, O.C.G.A. §§ 8-2-130 through 8-2-143. 1984 Op. Att'y Gen. No. 84-4.

**8-2-120. Authority to enter to determine compliance with part.**

The commissioner or the authorized representatives of the commissioner may enter at reasonable times any factory, warehouse, site, or establishment in which industrialized buildings are manufactured, stored, held for sale, or installed for the purpose of ascertaining whether the requirements of this part and the rules and regulations issued pursuant to this part have been and are being met. (Code 1981, § 8-2-120, enacted by Ga. L. 1992, p. 1158, § 5.)

**8-2-121. Records and reports to be maintained by manufacturers, dealers, and installers; inspection of books, papers, records, and documents.**

Each manufacturer, dealer, or installer of industrialized buildings shall establish and maintain such records, make such reports, and provide such information as the commissioner may require by rule or regulation in order to determine whether the manufacturer, dealer, or installer has acted or is acting in compliance with this part. The commissioner may inspect the appropriate books, papers, records, and documents relevant to determining whether the manufacturer, dealer, or installer has acted or is acting in compliance with this part. This authority shall be liberally construed. (Code 1981, § 8-2-121, enacted by Ga. L. 1992, p. 1158, § 5.)

**PART 2****MANUFACTURED HOMES**

**Cross references.** — Ad valorem taxation of mobile homes, § 48-5-440 et seq.

Commissioner of Insurance, Chapter 120.3-7.

**Administrative rules and regulations.** — Rules and regulations for manufactured homes, Official Compilation of Rules and Regulations of State of Georgia, Office of

Uniform procedures for mobil homes, Official Compilation of Rules and Regulations of State of Georgia, Property Tax Unit, Chapter 560-11-9.

## OPINIONS OF THE ATTORNEY GENERAL

**Aim of part.** — O.C.G.A. pt. 2, ch. 2, t. 8 is aimed at safety standards for design and construction of new mobile homes. 1981 Op. Att’y Gen. No. U81-15.

**Federal preemption.** — The National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C.

§§ 5401 through 5426, does not preempt O.C.G.A. § 8-2-119, but may preempt certain other portions of the Georgia statute dealing with factory-built buildings and dwelling units, O.C.G.A. §§ 8-2-130 through 8-2-143. 1984 Op. Att’y Gen. No. 84-4.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 54 Am. Jur. 2d, Mobile Homes, Trailer Parks, and Tourist Camps, §§ 5-7, 10, 11.

**8-2-130. Short title.**

This part shall be known and may be cited as “The Uniform Standards Code for Manufactured Homes Act.” (Ga. L. 1973, p. 4, § 1; Code 1981, § 8-2-130; Ga. L. 1982, p. 1376, §§ 1, 7; Ga. L. 2004, p. 607, § 1.)

**Editor’s notes.** — Ga. L. 2004, p. 607, § 1, effective January 1, 2005, reenacted this Code section without change.

**8-2-131. (For effective date, see note) Definitions.**

As used in this part, the term:

(1) “Commissioner” means the Georgia Safety Fire Commissioner.

(2) “Installer” means a person responsible for performing an installation and who is required to obtain a license pursuant to the provisions of Code Section 8-2-160.

(3) “Lending institutions” means lenders that acquire manufactured or mobile homes incident to their regular business, including national and state chartered banks, federal and state chartered credit unions, lenders that are licensed under Article 13 of Chapter 1 of Title 7, and lenders that are involved in manufactured or mobile home chattel lending.

(4) “Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the

requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

(5) “Manufacturer” means any person who constructs or assembles manufactured homes.

(6) “Mobile home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein and manufactured prior to June 15, 1976.

(7) “Person” means an individual, corporation, partnership, association, or any other legal entity but shall not include a trust or the state or any political subdivision thereof.

(8) “Retail broker” means any person engaged in the business of selling or offering for sale to consumers three or more new or used manufactured or mobile homes in a 12 month period and who does not maintain a display of manufactured or mobile homes. As used in this paragraph, the terms “selling” and “sale” include lease-purchase transactions, and the term “retail broker” does not include lending institutions.

(9) “Retailer” means any person engaged in the business of selling or offering for sale to consumers three or more new or used manufactured or mobile homes in a 12 month period and who maintains a display of manufactured or mobile homes. As used in this paragraph, the terms “selling” and “sale” include lease-purchase transactions, and the term “retailer” does not include lending institutions. (Ga. L. 1968, p. 415, § 2; Ga. L. 1973, p. 4, § 2; Code 1981, § 8-2-131; Ga. L. 1982, p. 1376, §§ 3, 7; Ga. L. 1989, p. 14, § 8; Ga. L. 1992, p. 2750, § 1; Ga. L. 2004, p. 607, § 1.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2005. For version of this Code section in effect until January 1, 2005, see the 2004 amendment note.

**The 2004 amendment,** effective January 1, 2005, added paragraphs (2) and (3); redesignated former paragraphs (3) through (5) as present paragraphs (4) through (6), re-

spectively; substituted “homes” for “housing” at the end of paragraph (5); added paragraphs (7) and (8); and redesignated former paragraph (2) as present paragraph (9) and substituted the present provisions for the former provisions which read: “(2) ‘Dealer’ means any person who sells or offers for sale to consumers three or more new or used manufactured homes or mobile



homes in a 12 month period. Such term shall not include a person who sells or offers for sale one or more manufactured homes or mobile homes in conjunction with the transfer of an interest in land.”

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2004, a comma was deleted following “entity” in subsection (7).

JUDICIAL DECISIONS

**Cited in** *White v. Legodais*, 249 Ga. 849, 295 S.E.2d 99 (1982); *Hill v. Duncan*, 249 Ga. App. 342, 548 S.E.2d 83 (2001).

OPINIONS OF THE ATTORNEY GENERAL

**Permanent chassis.** — A “permanent chassis” is one which is a part of the mobile home, provides the support for the floor and

foundation, and cannot be removed at any time. 1983 Op. Att’y Gen. No. 83-15.

RESEARCH REFERENCES

**ALR.** — Use of trailer or similar structure for residence purposes as within limitation of restrictive covenant, zoning provision, or building regulation, 96 ALR2d 232; 17 ALR4th 106.

What is “mobile home,” “house trailer,” “trailer house,” or “trailer” within meaning of restrictive covenant, 83 ALR5th 651.

**8-2-132. (For effective date, see note) Authority of Commissioner; policy and purpose.**

(a) The Commissioner is authorized and empowered to contract or enter into cooperative agreements with any agency, department, or instrumentality of the United States; any agency, board, department, or commission of the state; any county, municipality, or local government of the state, or any combination of same; any public or private corporation or firm, or any persons whatsoever; or any public authority, agency, commission, or institution to participate in the enforcement of manufactured home construction and safety standards which may be promulgated pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.; provided, however, that the Commissioner shall notify the United States Department of Housing and Urban Development by July 1 of his or her intention to terminate any such contract or agreement, which termination shall become effective on July 1 of the following year.

(b) It is the policy of this state and purpose of this part to forbid the manufacture and sale of new manufactured homes which are not constructed in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

(c) The Commissioner is authorized and empowered to issue and promulgate all rules and procedures which in his or her judgment are

necessary and desirable to make effective the construction standards established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq. (Ga. L. 1968, p. 415, § 3; Ga. L. 1973, p. 4, § 3; Ga. L. 1977, p. 879, § 1; Code 1981, § 8-2-132; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 2004, p. 607, § 1.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2005. Until January 1, 2005, this Code section reads as follows: “(a) Because of the manner of construction, assembly, and use of manufactured homes and their systems, components, and appliances (including heating, plumbing, and electrical systems), these types of dwellings may, like other finished products having concealed vital parts, present hazards to the health, life, and safety of persons and to the safety of property unless properly manufactured. In the sale of manufactured homes, there is also the possibility of defects not readily ascertainable when inspected by purchasers. Accordingly, it is the policy and purpose of this state to provide protection to the public against those possible hazards and, for that purpose, to forbid the manufacture and sale of new manufactured homes which are not so constructed as to provide reasonable safety and protection to their owners and users.

“(b) The Commissioner is authorized and directed to investigate and examine engineering and construction practices and techniques; the properties of construction materials used in the construction and assembly of manufactured homes; electrical, plumbing, heating, and other systems and appliances used in manufactured homes; fire prevention and protective techniques; and other measures to promote the safety of persons and property and to protect the health of users of manufactured homes.

“(c) The Commissioner is authorized and empowered to issue and promulgate all rules and procedures which in his judgment are necessary and desirable to make effective the construction standards so established.

“(d) The Commissioner is authorized and empowered to contract or enter into cooperative agreements with any agency, department, or instrumentality of the United States; any agency, board, department, or commission of this state; any county, municipality, or local government of the state, or any combination of same; any public or private corporation, firm, or any persons whatsoever; or any public authority, agency, commission, or institution, as may be necessary to implement his responsibilities under this part, to further the stated policy and purposes thereof, or to participate in the enforcement of manufactured home construction and safety standards which may be promulgated pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.”

**The 2004 amendment**, effective January 1, 2005, rewrote this Code section.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2004, “corporation or” was substituted for “corporation,” near the beginning of subsection (a) and “agreement, which” was substituted for “agreement which” near the end of subsection (a).

**U.S. Code.** — The federal National Manufactured Housing Construction and Safety Standards Act of 1974, referred to in this section, is codified at 42 U.S.C. § 5401 et seq.

**Administrative rules and regulations.** — Rules and regulations for manufactured homes, Official Compilation of Rules and Regulations of State of Georgia, Office of Commissioner of Insurance, Chapter 120.3-7.

## OPINIONS OF THE ATTORNEY GENERAL

**Part not intended to regulate used manufactured homes.** — O.C.G.A. § 8-2-132(a) clearly evinces intent of General Assembly to regulate new mobile (now manufactured)

homes and makes no mention of any intent to regulate used mobile homes. 1981 Op. Att’y Gen. No. U81-15.

## RESEARCH REFERENCES

**ALR.** — What is “mobile home,” “house trailer,” “trailer house,” or “trailer” within meaning of restrictive covenant, 83 ALR5th 651.

**8-2-133. (For effective date, see note) Promulgation of rules and regulations by Commissioner; making of investigations and inspections.**

During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-132, the Commissioner may make, amend, alter, and repeal general rules and regulations of procedure to carry into effect this part, to obtain statistical data concerning manufactured homes, and to prescribe means, methods, and practices to make this part effective. The Commissioner may also make such investigations and inspections as in his or her judgment are necessary to enforce and administer this part. (Ga. L. 1968, p. 415, § 7; Ga. L. 1973, p. 4, § 7; Code 1981, § 8-2-133; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 2004, p. 607, § 1.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2005. For version of this Code section in effect until January 1, 2005, see the 2004 amendment note.

**The 2004 amendment,** effective January 1, 2005, substituted “During such time as the

Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-132, the Commissioner” for “The Commissioner is charged with the administration of this part. He” at the beginning and inserted “or her” in the last sentence.

**8-2-134. (For effective date, see note) Manufacture and sale of manufactured homes constructed and assembled in accordance with rules issued by Commissioner.**

During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-132, no person may manufacture, sell, or offer for sale any manufactured home unless such manufactured home and its components, systems, and appliances have been constructed and assembled in accordance with rules issued by the Commissioner with respect to the construction, assembly, and sale of such manufactured homes and unless compliance with such rules is shown in the manner required by the Commissioner’s rules. (Ga. L. 1968, p. 415, § 4; Ga. L. 1973, p. 4, § 4; Code 1981, § 8-2-134; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 2004, p. 607, § 1.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2005. For version of this Code section in effect until January 1, 2005, see the 2004 amendment note.

**The 2004 amendment,** effective January 1, 2005, substituted “During such time as the

Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-132, no” for “No” at the beginning and deleted “for the purpose of affording reasonable protection to persons and property” following “Commissioner” near the middle.



**Editor's notes.** — Pursuant to the authority granted by Code Section 8-2-132, the Safety Fire Commissioner has promulgated rules pertaining to the construction of mo-

bile homes. These rules are designated as Ch. 120-3-7 of the Rules and Regulations of the State of Georgia and are on file in the office of the Comptroller General.

**8-2-135. (For effective date, see note) Licenses for manufacturers who build, sell, or offer for sale manufactured homes in state; licenses for dealers of manufactured or mobile homes.**

During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-132:

(1) Every manufacturer who manufactures manufactured homes outside the State of Georgia and who sells or offers for sale a manufactured home in Georgia shall apply for and obtain a license;

(2) Every manufacturer who manufactures manufactured homes in Georgia shall apply for and obtain a license;

(3) Every retailer and retail broker who sells or offers for sale new or used manufactured homes or mobile homes in Georgia shall apply for and obtain a license;

(4) Applications for licenses and renewal licenses shall be obtained from the Commissioner and submitted on or before January 1 of each year. All applicants shall certify in the application that all construction, electrical, heating, and plumbing standards will be complied with as set forth in this part and in the rules and regulations of the Commissioner; and

(5) The license and renewal license fee shall be \$300.00 per manufacturing plant which manufactures manufactured homes within the State of Georgia; \$300.00 per out-of-state manufacturing plant which manufactures manufactured homes for the purpose of offering for sale, or having such homes sold, within the State of Georgia; and \$200.00 per retailer location and retail broker which sells, offers for sale, or transports to sell such homes within the State of Georgia. The license shall be valid from January 1 through December 31 of the year in which it was issued. The fee for delinquent renewal applications received after January 10 of each year shall be double the regular annual renewal fee. (Ga. L. 1968, p. 415, § 5; Ga. L. 1973, p. 4, § 5; Ga. L. 1979, p. 1286, § 1; Code 1981, § 8-2-135; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 1983, p. 456, § 1; Ga. L. 1984, p. 22, § 8; Ga. L. 1992, p. 2725, § 3; Ga. L. 1992, p. 2750, § 2; Ga. L. 1993, p. 91, § 8; Ga. L. 2004, p. 607, § 1.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2005. Until January 1, 2005, this

Code section reads as follows: "(a) Every manufacturer who manufactures manufactured homes outside the State of Georgia

and who sells or offers for sale a manufactured home in Georgia shall apply for and obtain a license.

“(b) Every manufacturer who manufactures manufactured homes in Georgia shall apply for and obtain a license.

“(c) Every dealer who sells or offers for sale new or used manufactured homes or mobile homes in Georgia shall apply for and obtain a license.

“(d) Applications for licenses and renewal licenses shall be obtained from the Commissioner and submitted to him on or before January 1 of each year. All applicants shall certify in the application that all construction, electrical, heating, and plumbing standards will be complied with as set forth in this part and in the rules and regulations of the Commissioner.

“(e) The license and renewal license fee shall be \$200.00 per manufacturing plant which manufactures manufactured homes within the State of Georgia; \$200.00 per out-of-state manufacturing plant which manufactures manufactured homes for the purpose of offering for sale, or having such homes sold, within the State of Georgia; and \$100.00 per dealer location which sells, offers for sale, or transports to sell such homes within the State of Georgia. The license shall be valid from January 1 through December 31 of the year in which it was issued. The fee for delinquent renewal applications received after January 10 of each year shall be double the regular annual renewal fee.

“(f) During such time as the Commissioner’s office is acting as a primary inspection agency pursuant to Section 623 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., or the regulations issued thereunder, every manufacturer who manufactures manufactured homes in Georgia shall pay to the Commissioner a manufacturing inspection fee for each manufactured home manufactured in Georgia, irrespective of whether the manufactured home is offered for sale in this state. This manufacturing fee shall be applied as fol-

lows: \$15.00 for each single-wide unit; \$20.00 for each double-wide unit with two transportable sections; and \$25.00 for each triple-wide unit with three transportable sections. For any reinspection, a \$10.00 additional fee shall be charged.

“(g) During such time as the Commissioner’s office is acting as a primary inspection agency pursuant to Section 623 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., the Commissioner may adopt a monitoring inspection fee not to exceed the amount established by the secretary of housing and urban development. This monitoring inspection fee shall be an amount paid by each manufactured home manufacturer in Georgia for each manufactured home manufactured in this state. The monitoring inspection fee shall be paid by the manufacturer to the secretary of housing and urban development or to the secretary’s agent for distribution in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., and the regulations promulgated thereunder.

**The 2004 amendment**, effective January 1, 2005, added the introductory paragraph; redesignated former subsections (a) through (e) as present paragraphs (1) through (5), respectively; substituted a semicolon for a period in paragraphs (1) through (3); substituted “retailer and retail broker” for “dealer” in paragraph (3); in paragraph (4), deleted “to him” following “submitted” in the middle of the first sentence and substituted “; and” for a period at the end; in the first sentence of paragraph (5), substituted “\$300.00” for “\$200.00” twice and substituted “\$200.00 per retailer location and retail broker” for “\$100.00 per dealer location”; and redesignated former subsections (f) and (g) as present subsections (a) and (b) of Code Section 8-2-135.1.

**U.S. Code.** — Section 623 of the National Manufactured Housing Construction and Safety Standards Act of 1974, referred to in this section, is codified at 42 U.S.C. § 5422.

## OPINIONS OF THE ATTORNEY GENERAL

**Application only to dealers and sellers of new manufactured homes.** — Inasmuch as O.C.G.A. Pt. 2, Ch. 2, T. 8 is aimed at safety

in new mobile (now manufactured) homes, it is logical that the General Assembly intended those statutory provisions to apply

only to dealers and sellers of new mobile (now manufactured) homes. 1981 Op. Att’y Gen. No. U81-15.

Support for the position that O.C.G.A. § 8-2-135(b) and (c) (now (2) and (3)) should be construed as applying only to dealers or manufacturers of new mobile (now manufactured) homes can be found in O.C.G.A. §§ 8-2-135(f) (now O.C.G.A. § 8-2-135.1), 8-2-136, and 8-2-143, which make reference to the National Mobile Home Construction and Safety Standards Act of 1974, (codified at 42 U.S.C. § 5401, et

seq.), which Act defines the word “dealer” as a seller of new mobile (now manufactured) homes. 1981 Op. Att’y Gen. No. U81-15.

**Waiver of fee requirements by reciprocal agreement.** — Under Ga. L. 1973, p. 4, § 6 (see O.C.G.A. § 8-2-141) the Georgia Safety Fire Commissioner cannot enter into a reciprocal agreement with another state waiving the fees imposed by Ga. L. 1973, p. 4, § 5 (see O.C.G.A. § 8-2-135). 1973 Op. Att’y Gen. No. 73-73.

#### RESEARCH REFERENCES

**ALR.** — Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 ALR2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 ALR3d 637.

#### **8-2-135.1. (Effective October 1, 2004) Manufacturing inspection fee; reinspection; monitoring inspection fee.**

(a) During such time as the Commissioner’s office is acting as the primary inspection agency pursuant to Section 623 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., or the regulations issued thereunder, every manufacturer who manufactures manufactured homes in Georgia shall pay to the Commissioner a manufacturing inspection fee for each manufactured home manufactured in Georgia, irrespective of whether the manufactured home is offered for sale in this state. This manufacturing inspection fee shall be \$20.00 for each certification label, as defined in Section 623 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq. For any reinspection, a \$10.00 additional fee shall be charged.

(b) During such time as the Commissioner’s office is acting as the state administrative agency pursuant to Section 623 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., a monitoring inspection fee paid by each manufacturer in Georgia for each manufactured home manufactured in this state shall be paid to the secretary of the United States Department of Housing and Urban Development or to the secretary’s agent for distribution in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., and the regulations promulgated thereunder. (Code 1981, § 8-2-135.1, enacted by Ga. L. 2004, p. 607, § 1.)



**Effective date.** — This Code section becomes effective October 1, 2004.

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the provisions, opinions under former Code Section 8-2-135(f) and (g), are included in the annotations for this Code section.

**Opinions of Attorney General.** — Support for the position that subsections (b) and (c) (now subsections (2) and (3)) of O.C.G.A. § 8-2-135 should be construed as applying only to dealers or manufacturers of new

mobile (now manufactured) homes can be found in §§ 8-2-135.1(a), 8-2-136, and 8-2-143, which make reference to the National Mobile Home Construction and Safety Standards Act of 1974, (codified at 42 U.S.C. § 5401, et seq.), which act defines the word “dealer” as a seller of new mobile (now manufactured) homes. 1981 Op. Att’y Gen. No. U81-15.

### 8-2-136. (For effective date, see note) Records and reports of manufactured home manufacturers, retailers, retail brokers, and installers; inspection of such books and records.

Each manufacturer, retailer, retail broker, and installer of manufactured homes shall establish and maintain such records, make such reports, and provide such information as the Commissioner or the secretary of the United States Department of Housing and Urban Development may reasonably require in order to be able to determine whether the manufacturer, retailer, retail broker, or installer has acted or is acting in compliance with this part or with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq. Upon the request of a person duly designated by the Commissioner or the secretary of the United States Department of Housing and Urban Development, each manufacturer, retailer, retail broker, and installer shall permit that person to inspect appropriate books, papers, records, and documents relevant to determining whether the manufacturer, retailer, retail broker, or installer has acted or is acting in compliance with this part or with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq. (Ga. L. 1979, p. 1286, § 2; Code 1981, § 8-2-136; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 2004, p. 607, § 1.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2005. Until January 1, 2005, this Code section reads as follows: “Each manufacturer, distributor, and dealer of manufactured homes shall establish and maintain such records, make such reports, and provide such information as the Commissioner or the secretary of housing and urban development may reasonably require in order to be able to determine whether the manufacturer, distributor, or dealer has acted or is acting in compliance with this part or with

the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq. Upon the request of a person duly designated by the Commissioner or the secretary of housing and urban development, each manufacturer, distributor, and dealer shall permit that person to inspect appropriate books, papers, records, and documents relevant to determining whether the manufacturer, distributor, or dealer has acted or is acting in compliance with this part or with the National Manufactured Housing Construction

and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.”

**The 2004 amendment**, effective January 1, 2005, substituted “retailer, retail broker, and installer” for “distributor, and dealer” twice and substituted “retailer, retail broker, or installer” for “distributor, or dealer” twice, and substituted “the United States Depart-

ment of Housing and Urban Development” for “housing and urban development” twice.

**U.S. Code.** — The National Manufactured Housing Construction and Safety Standards Act of 1974, referred to in this section, is codified at 42 U.S.C. § 5401 et seq.

**8-2-137. (For effective date, see note) Conduct of hearings and presentations of views; dispute resolution program.**

(a) Any hearing conducted under the provisions of this chapter or of the rules and regulations promulgated under this part shall be in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.”

(b) (For effective date, see note) The Commissioner shall be authorized to determine by regulation the manner in which he or she will conduct presentations of views as required during his or her participation as the state administrative agency pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

(c) (For effective date, see note) The Commissioner may, through regulations, establish a dispute resolution program in compliance with 42 U.S.C. Section 5422, the National Manufactured Housing Construction and Safety Standards Act of 1974. (Ga. L. 1973, p. 4, § 8; Code 1981, § 8-2-137; Ga. L. 1982, p. 1376, §§ 5, 7; Ga. L. 1983, p. 3, § 6; Ga. L. 2004, p. 607, § 1.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2005. For version of this Code section in effect until January 1, 2005, see the 2004 amendment note.

**The 2004 amendment**, effective January 1, 2005, in subsection (b), inserted “or she”, inserted “or her” and substituted “state

administrative agency” for “Georgia State Administrative Agency”; and added subsection (c).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1989, “Manufactured Housing” was substituted for “Mobile Home” in subsection (b).

**8-2-138. (For effective date, see note) Alterations or modifications in manufactured homes by retailers, retail brokers, or installers.**

During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-132, retailers, retail brokers, and installers are expressly prohibited from altering or modifying any manufactured home certified under this part and under the rules and regulations of the Commissioner, except that alterations, changes, or modifications may be made by retailers, retail brokers, or installers certified to make such alterations, changes, or modifications in accordance with rules and regulations promulgated by the

Commissioner. (Ga. L. 1973, p. 4, § 9; Code 1981, § 8-2-138; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 2004, p. 607, § 1.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2005. For version of this Code section in effect until January 1, 2005, see the 2004 amendment note.

**The 2004 amendment**, effective January 1, 2005, substituted “During such time as the

Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-132, retailers, retail brokers, and installers” for “Dealers” at the beginning and substituted “retailers, retail brokers, or installers” for “dealers” near the end.

### RESEARCH REFERENCES

**ALR.** — Practices forbidden by state deceptive trade practice and consumer protection acts, 89 ALR3d 449.

#### **8-2-139. (For effective date, see note) Interfering with representative of Commissioner in performance of duties; entry and inspection of premises where manufactured homes are manufactured or sold.**

(a) No person may interfere with, obstruct, or hinder an authorized representative of the Commissioner who displays proper department credentials in the performance of his or her duties as set forth in this part.

(b) The Commissioner or any of his or her authorized representatives, upon showing proper credentials and in the discharge of their duties pursuant to this part, are authorized during regular business hours and without advance notice to enter and inspect all facilities, warehouses, or establishments in the State of Georgia in which manufactured homes are manufactured.

(c) The Commissioner or any of his or her authorized representatives, upon showing proper credentials and in the discharge of their duties pursuant to this part, are authorized during regular business hours and without advance notice to enter upon and inspect all premises in the State of Georgia in which manufactured homes are being sold. (Ga. L. 1968, p. 415, § 8; Ga. L. 1973, p. 4, § 10; Ga. L. 1979, p. 1286, § 3; Code 1981, § 8-2-139; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 2004, p. 607, § 1.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2005. For version of this Code section in effect until January 1, 2005, see the 2004 amendment note.

**The 2004 amendment**, effective January 1, 2005, inserted “or her” in subsections (a) through (c).



**8-2-140. Power of authorized representative of Commissioner to stop and inspect manufactured homes in transit.**

Any authorized representative of the Commissioner may, upon displaying proper department credentials, stop and inspect any new manufactured home in transit in order to ascertain if the manufactured home complies with this part and the rules and regulations promulgated hereunder, provided that the manufactured home has been manufactured in this state or has been transported into this state for the purpose of sale within this state. (Ga. L. 1973, p. 4, § 11; Code 1981, § 8-2-140; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 1984, p. 22, § 8; Ga. L. 2004, p. 607, § 1.)

**Cross references.** — Authority of law enforcement officers to stop vehicles for purposes of determining compliance with vehicle size, weight, etc., laws, § 32-6-30.

**Editor's notes.** — Ga. L. 2004, p. 607, § 1, effective January 1, 2005, reenacted this Code section without change.

**8-2-141. (For effective date, see note) Monetary penalty; injunctive relief.**

(a) During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-132, any retailer, retail broker, or manufacturer who fails to apply for or obtain a license as required by Code Section 8-2-135 or who fails to remit the appropriate license fee as stated in Code Section 8-2-135 shall be subject to a monetary penalty not to exceed \$100.00 for each day that such violation persists, except that the maximum monetary penalty shall not exceed \$20,000.00 for any one violation.

(b) Any such monetary penalty may be imposed by the Commissioner after notice and opportunity for hearing as provided under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The amount of such penalty may be collected by the Commissioner in the same manner that money judgments are now enforced in the superior courts of this state.

(c) In addition to any such monetary penalty, the Commissioner may bring a civil action to enjoin any violation of Code Section 8-2-135, and it shall not be necessary for the Commissioner to allege or prove the absence of an adequate remedy at law. (Ga. L. 1968, p. 415, § 6; Ga. L. 1973, p. 4, § 6; Ga. L. 1974, p. 491, § 1; Code 1981, § 8-2-141; Ga. L. 1982, p. 1376, §§ 4, 7; Ga. L. 2004, p. 607, § 1.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2005. Until January 1, 2005, this Code section reads as follows: "(a) Any dealer or manufacturer who fails to apply for or obtain a license as required by Code Section 8-2-135 or who fails to remit the appropriate license fee as stated in Code

Section 8-2-135 shall be subject to a civil penalty not to exceed \$100.00 for each day that such violation persists, except that the maximum civil penalty shall not exceed \$20,000.00 for any one violation.

"(b) Any such civil penalty may be imposed by the Commissioner only after notice and hearing as provided for in Code Section

8-2-137. The amount of such penalty may be collected by the Commissioner in the same manner that money judgments are now enforced in the superior courts of this state.

“(c) In addition to any such civil penalty, the Commissioner may bring a civil action to enjoin any violation of Code Section 8-2-135, and it shall not be necessary for the Commissioner to allege or prove the absence of an adequate remedy at law.”

**The 2004 amendment**, effective January 1, 2005, substituted “monetary penalty” for “civil penalty” twice in subsection (a) and at the beginning of subsections (b) and (c);

substituted “During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-132, any retailer, retail broker,” for “Any dealer” at the beginning of subsection (a); and, in the first sentence of subsection (b), deleted “only” following “Commissioner”, inserted “opportunity for”, and substituted “under Chapter 13 of Title 50, the ‘Georgia Administrative Procedure Act.’” for “for in Code Section 8-2-137.” at the end of the first sentence of subsection (b).

**OPINIONS OF THE ATTORNEY GENERAL**

**Waiver of fee requirements by reciprocal agreement.** — Under Ga. L. 1973, p. 4, § 6 (see O.C.G.A. § 8-2-141) the Georgia Safety Fire Commissioner cannot enter into a reciprocal agreement with another state waiv-

ing the fees imposed by Ga. L. 1973, p. 4, § 5 (see O.C.G.A. § 8-2-135(e) (now O.C.G.A. § 8-2-135(5))). 1973 Op. Att’y Gen. No. 73-73.

**8-2-142. Adjustment of taxes, license fees, or other fees imposed on foreign manufacturers domiciled in states which impose higher taxes, license fees, or other fees on Georgia-domiciled manufacturers.**

If any state or foreign country imposes upon Georgia-domiciled manufactured home manufacturers (or upon their agents or representatives) any taxes, licenses, or other fees in the aggregate, or any fines, penalties, or other material obligations, prohibitions, or restrictions, for the privilege of doing business in that state or country, which costs, obligations, prohibitions, or restrictions are in excess of similar costs, obligations, prohibitions, or restrictions imposed by the State of Georgia upon manufactured home manufacturers (or their agents or representatives) which are domiciled in that state or foreign country and which are doing business or are seeking to do business in the State of Georgia, then so long as that state or foreign country continues to impose such costs, obligations, prohibitions, or restrictions upon Georgia-domiciled manufactured home manufacturers (or their agents or representatives), the State of Georgia shall impose upon manufactured home manufacturers (or their agents or representatives) which are domiciled in that state or foreign country and which are doing business or are seeking to do business in Georgia the same costs, obligations, prohibitions, or restrictions which are imposed by that state or foreign country on Georgia-domiciled manufactured home manufacturers (or their agents or representatives) which are doing business or seeking to do business in that state or foreign country. Any tax, license, or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on manufactured home manufac-

turers domiciled in Georgia (or their agents or representatives) shall be deemed to be imposed by such state or country within the meaning of this Code section. (Ga. L. 1975, p. 1557, § 1; Code 1981, § 8-2-142; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 2004, p. 607, § 1.)

**Editor's notes.** — Ga. L. 1973, p. 4, which forms the basis for this part, was amended by Ga. L. 1975, p. 1557, § 1, which added a "Section 12A" to the 1973 Act. The 1973 Act was also amended by Ga. L. 1979, p. 1286, § 5, which again added a "Section 12A" to the 1973 Act. It does not appear that the later Section 12A was intended to amend or

supersede the earlier Section 12A, and both have been codified, the 1975 amendment as Code Section 8-2-142, the 1979 amendment as Code Section 8-2-143.

Ga. L. 2004, p. 607, § 1, effective January 1, 2005, reenacted this Code section without change.

### **8-2-143. Civil and criminal penalty for violation of Section 610 of National Manufactured Housing Construction and Safety Standards Act of 1974 and regulations and final orders issued thereunder.**

(a) *Civil penalties.* Any person in this state who violates any provision of Section 610 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., or any regulation or final order issued thereunder, shall be liable to the State of Georgia for a civil penalty not to exceed \$1,000.00 for each such violation. Each violation of Section 610 of the aforementioned act or of any regulation or order issued thereunder shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed \$1 million for any related series of violations occurring within one year from the date of the first violation.

(b) *Criminal penalties.* An individual or a director, officer, or agent of a corporation who knowingly and willfully violates any provision of Section 610 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., in a manner which threatens the health or safety of any purchaser shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000.00 or be imprisoned for not more than 12 months, or both. (Ga. L. 1968, p. 415, § 9; Ga. L. 1973, p. 4, § 12; Ga. L. 1979, p. 1286, §§ 4, 5; Code 1981, § 8-2-143; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 2004, p. 607, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1989, "Manufactured Housing" was substituted for "Mobile Home" in subsections (a) and (b).

**Editor's notes.** — Ga. L. 1973, p. 4, which forms the basis for this part, was amended by Ga. L. 1975, p. 1557, § 1, which added a "Section 12A" to the 1973 Act. The 1973 Act was also amended by Ga. L. 1979, p. 1286, § 5, which again added a "Section 12A" to

the 1973 Act. It does not appear that the later Section 12A was intended to amend or supersede the earlier Section 12A, and both have been codified, the 1975 amendment as Code Section 8-2-142, the 1979 amendment as Code Section 8-2-143.

Ga. L. 2004, p. 607, § 1, effective January 1, 2005, reenacted this Code section without change.

**U.S. Code.** — Section 610 of the National



Manufactured Housing Construction and Safety Standards Act of 1974, referred to in this section, is codified at 42 U.S.C. § 5409.

**8-2-144. (Effective January 1, 2005) Reporting and accounting for fees.**

The Commissioner of Insurance shall file a report on or before December 15 of each year accounting for all fees received by the Commissioner under this part and Part 3 of this article for the preceding 12 month period and for the actual costs of the inspection programs under this part and Part 3 of this article for the preceding 12 month period. Such report shall be provided to the chairpersons of the House Appropriations Committee, the Senate Appropriations Committee, the House Governmental Affairs Committee, and the Senate Regulated Industries and Utilities Committee, the director of the Office of Planning and Budget, and the director of the Legislative Budget Office. (Code 1981, § 8-2-144, enacted by Ga. L. 2004, p. 607, § 1.)

<b>Effective date.</b> — This Code section becomes effective January 1, 2005.	Code Section 28-9-5, in 2004, “for the preceding 12 month period” following “inspection programs” was deleted.
<b>Code Commission notes.</b> — Pursuant to	

PART 3

INSTALLATION OF MANUFACTURED HOMES AND MOBILE HOMES

**8-2-160. Definitions.**

As used in this part, the term:

- (1) “Commissioner” means the Georgia Safety Fire Commissioner.
- (2) “Installation” means the construction of a foundation system and the placement or erection of a manufactured home or a mobile home on the foundation system. Such term includes, without limitation, supporting, blocking, leveling, securing, or anchoring such home and connecting multiple or expandable sections of such home.
- (3) “Installer” means a person responsible for performing an installation and who is required to obtain a license pursuant to the provisions of Code Section 8-2-164.
- (4) “Manufactured home” means a new or used structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure

which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

(5) “Manufacturer” means any person who constructs or assembles manufactured housing.

(6) “Mobile home” means a new or used structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein and built prior to June 15, 1976.

(7) “Person” means an individual, corporation, partnership, association, or any other legal entity, but shall not include a trust or the state or any political subdivision thereof. (Code 1981, § 8-2-160, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2.)

**Editor’s notes.** — Ga. L. 2004, p. 607, § 2, effective January 1, 2005, reenacted this Code section without change.

#### 8-2-160.1. (Effective January 1, 2005) Cooperative agreements.

The Commissioner is authorized and empowered to contract or enter into cooperative agreements with any agency, department, or instrumentality of the United States as may be necessary to participate in the enforcement of manufactured home installation standards which may be promulgated pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.; provided, however, that the Commissioner shall notify the United States Department of Housing and Urban Development by July 1 of his or her intention to terminate any such contract or agreement, which termination shall become effective on July 1 of the following year. (Code 1981, § 8-2-160.1, enacted by Ga. L. 2004, p. 607, § 2.)

**Effective date.** — This Code section becomes effective January 1, 2005.

**Code Commission notes.** — Pursuant to

Code Section 28-9-5, in 2004, a comma was inserted between “agreement” and “which”.

**8-2-161. (For effective date, see note) Duty of Commissioner to establish rules and procedures for licensure and installation.**

During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-160.1, the Commissioner may:

(1) Establish rules and procedures for the licensure of installers as provided by Code Section 8-2-164 and the implementation and collection of an annual license fee, which shall be \$200.00; and

(2) Establish and publish rules and regulations governing the installation of manufactured homes and mobile homes to be followed in instances in which no manufacturer's installation instructions are available. Such rules and regulations shall be equivalent to usual and ordinary manufacturer's installation instructions. (Code 1981, § 8-2-161, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2005. For version of this Code section in effect until January 1, 2005, see the 2004 amendment note.

**The 2004 amendment,** effective January 1, 2005, in the introductory paragraph, substituted "During such time as the Commissioner has contracted or entered into coop-

erative agreements pursuant to his or her authority under Code Section 8-2-160.1," for "It shall be the authority and duty of" at the beginning and substituted "may" for "to"; substituted "\$200.00" for "\$100.00" at the end of paragraph (1); and deleted "and Appendix H of the State Building Code" following "instructions" at the end of paragraph (2).

**8-2-162. (For effective date, see note) Administration of part by Commissioner; investigation of consumer complaints.**

During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-160.1, the Commissioner has full authority to administer this part and may make, amend, alter, and repeal general rules and regulations of procedure to carry into effect this part, to obtain statistical data concerning manufactured homes and mobile homes, and to prescribe means, methods, and practices to make this part effective. The Commissioner may also make such investigations of consumer complaints relating to installations as in his or her judgment are necessary to enforce and administer this part. (Code 1981, § 8-2-162, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2005. For version of this Code section in effect until January 1, 2005, see the 2004 amendment note.

**The 2004 amendment,** effective January 1, 2005, in the first sentence, substituted "During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority



under Code Section 8-2-160.1, the” for “part. He”; and inserted “or her” in the last sentence.  
“The”, substituted “has” for “is charged with the” and substituted “part and” for

### 8-2-163. Prohibited act.

It shall be unlawful for any person to perform an installation of a manufactured home or a mobile home, without regard to whether such person receives compensation for such action, except as provided in this part. (Code 1981, § 8-2-163, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2.)

**Editor's notes.** — Ga. L. 2004, p. 607, § 2, effective January 1, 2005, reenacted this Code section without change.

### 8-2-164. (For effective date, see note) License required; permit purchase.

During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-160.1:

(1) Any installer performing any installation of a manufactured home or a mobile home in this state shall first obtain a license from the Commissioner; provided, however, that persons employed by or contracting with a licensed installer to perform installations shall not be required to obtain such license; and

(2) In addition to the requirements of paragraph (1) of this Code section, any installer performing any installation of any new or pre-owned manufactured or mobile home in this state shall first purchase a permit from the Commissioner. The cost of such permit shall be \$40.00 for each manufactured or mobile home. Each installer shall provide any information required by the Commissioner to be submitted to obtain a permit. A permit shall be attached by the installer to the panel box of each manufactured or mobile home upon completion of installation. (Code 1981, § 8-2-164, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2005. Until January 1, 2005, this Code section reads as follows: “Any installer performing any installation of a manufactured home or a mobile home in this state shall first obtain a license from the Commissioner; provided, however, that persons employed by or contracting with a licensed installer to perform installations shall not be required to obtain such license. The provi-

sions of this Code section shall not apply to a person who installs a mobile home or manufactured home on real property owned by such person or a mobile home or manufactured home intended for use as such person's primary or secondary residence; provided, however, that any such person shall comply with all other applicable provisions of this part.”

**The 2004 amendment,** effective January 1, 2005, rewrote this Code section.

**8-2-165. (For effective date, see note) Compliance with manufacturer's installation instructions; random inspections on installations.**

(a) Any installation of a manufactured home or a mobile home in this state shall be performed in strict compliance with the applicable manufacturer's installation instructions, specifically including, without limitation, correctly installed tie-downs and anchors. In the absence of such instructions, installations shall be performed in accordance with the applicable rules and regulations adopted by the Commissioner.

(b) During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-160.1, the Commissioner or his or her agent shall perform random inspections on installations performed by each installer each year. The inspections required by this subsection shall be independent of any requirements under Subpart I of Part 3282 of the Manufactured Home Procedural and Enforcement Regulations of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq. (Code 1981, § 8-2-165, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2005. For version of this Code section in effect until January 1, 2005, see the 2004 amendment note.

**The 2004 amendment**, effective January 1, 2005, designated the existing provisions as subsection (a) and added subsection (b).

**8-2-166. (For effective date, see note) Penalty for violation.**

Any person determined by the Commissioner to be in violation of this part may be penalized by a fine of not more than \$500.00 for each such violation, and by the suspension or revocation of licensure. Multiple violations of this part occurring in a single installation shall constitute one violation. Each installation performed in violation of this part shall constitute a separate violation. In addition to any penalty imposed by the Commissioner, any person convicted of a violation of this part shall be guilty of and may be punished as for a misdemeanor. (Code 1981, § 8-2-166, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2005. For version of this Code section in effect until January 1, 2005, see the 2004 amendment note.

**The 2004 amendment**, effective January 1, 2005, in the first sentence, substituted "determined by the Commissioner to be in" for "convicted of a" and substituted "may be" for "shall be guilty of a misdemeanor and may be"; and added the last sentence.

**8-2-167. Political subdivisions prohibited from adopting or enforcing requirements not consistent with part.**

No political subdivision may adopt or enforce any requirement not consistent with this part. (Code 1981, § 8-2-167, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2.)

**Editor's notes.** — Ga. L. 2004, p. 607, § 2, effective January 1, 2005, reenacted this Code section without change.

**8-2-168. (For effective date, see note) Compliance with "Georgia Administrative Procedure Act."**

(a) The adoption of rules and conduct of hearings under this part shall be in compliance with the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(b) (For effective date, see note) The Commissioner is authorized to provide by regulation the manner in which he or she will conduct presentations of views during his or her participation as the state administrative agency as required by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq. (Code 1981, § 8-2-168, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2.)

**Delayed effective date.** — Subsection (b), as set out above, becomes effective January 1, 2005. For version of subsection (b) in effect until January 1, 2005, see the 2004 amendment note.

2005, in subsection (b), inserted "or she", inserted "or her", substituted "state" for "Georgia", deleted "federal" preceding "National" and substituted "Housing" for "Home" near the end of the subsection.

**The 2004 amendment,** effective January 1,

## PART 4

### MANUFACTURED OR MOBILE HOMES

**Effective date.** — This part became effective May 31, 2003.

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 53 Am. Jur. 2d Mobile Home, §§ 1 et seq., 193 et seq.



## Subpart 1

## General Provisions

**8-2-180. Definitions.**

As used in this part, the term:

(1) “Clerk of superior court” means the clerk of the superior court of the county in which the property to which the home is or is to be affixed is located.

(2) “Commissioner of motor vehicle safety” includes any county tax commissioner when so authorized by the commissioner of motor vehicle safety to act on his or her behalf in carrying out the responsibilities of this part.

(3) “Home” means a manufactured home or mobile home.

(4) “Manufactured home” has the meaning specified in paragraph (4) of Code Section 8-2-160.

(5) “Mobile home” has the meaning specified in paragraph (6) of Code Section 8-2-160. (Code 1981, § 8-2-180, enacted by Ga. L. 2003, p. 430, § 1.)

**8-2-181. Manufactured or mobile home as personal property; requirements for real property status; requirements for Certificate of Permanent Location.**

(a) A manufactured home or mobile home shall constitute personal property and shall be subject to the “Motor Vehicle Certificate of Title Act,” Chapter 3 of Title 40, until such time as the home is converted to real property as provided for in this part.

(b) A manufactured home or mobile home shall become real property if:

(1) The home is or is to be permanently affixed on real property and one or more persons with an ownership interest in the home also has an ownership interest in such real property; and

(2) The owner of the home and the holders of all security interests therein execute and file a Certificate of Permanent Location:

(A) In the real estate records of the county where the real property is located; and

(B) With the commissioner of motor vehicle safety.

(c) The Certificate of Permanent Location shall be in a form prescribed by the commissioner of motor vehicle safety and shall include:

- (1) The name and address of the owner of the home;
- (2) The names and addresses of the holders of any security interest in and of any lien upon the home;
- (3) The title number assigned to the home;
- (4) A description of the real estate on which the home is or is to be located, including the name of the owner and a reference by deed book and page number to the chain of title of such real property; and
- (5) Any other data the commissioner of motor vehicle safety prescribes. (Code 1981, § 8-2-181, enacted by Ga. L. 2003, p. 430, § 1.)

**8-2-182. Recording of Certificate of Permanent Location; responsibilities of commissioner of motor vehicle safety; notification to tax assessors.**

(a) When a Certificate of Permanent Location is properly filed with the clerk of superior court, the clerk shall record such certificate in the same manner as other instruments affecting the real property described in the certificate and shall charge and collect the fees usually charged for recording deeds and other instruments relating to real estate. Such certificate shall be indexed under the name of the current owner of the real property in both the grantor and grantee indexes. The clerk shall provide the owner with a certified copy of the certificate, reflecting its filing, and shall charge and collect the fees usually charged for the provision of certified copies of documents relating to real estate.

(b) Upon receipt of a certified copy of a properly executed Certificate of Permanent Location, along with the certificate of title, the commissioner of motor vehicle safety shall file and retain a copy of such certificate together with all other prior title records related to the home. When a properly executed certificate has once been filed, the commissioner of motor vehicle safety shall accept no further title filings with respect to that home, except as may be necessary to correct any errors in the department's records and except as provided in Subparts 2 and 3 of this part.

(c) When a Certificate of Permanent Location is so filed, the commissioner of motor vehicle safety shall issue to the clerk of the superior court with whom the original Certificate of Permanent Location was filed confirmation by the commissioner of motor vehicle safety that the certificate has been so filed and the certificate of title has been surrendered.

(d) Upon receipt of confirmation of the filing of the Certificate of Permanent Location from the commissioner of motor vehicle safety, the clerk of superior court shall provide a copy of the Certificate of Permanent Location to the appropriate board of tax assessors or such other local official as is responsible for the valuation of real property. (Code 1981, § 8-2-182, enacted by Ga. L. 2003, p. 430, § 1.)

**8-2-183. Status of home as part of real property.**

(a) When a Certificate of Permanent Location has been properly filed with the clerk of superior court, a certified copy thereof properly filed with the commissioner of motor vehicle safety, and the certificate of title is surrendered, the home shall become for all legal purposes a part of the real property on which it is located. Without limiting the generality of the foregoing, the home shall be subject to transfer by the owner of the real property, subject to any security interest in the real property and subject to foreclosure of any such interest, in the same manner as and together with the underlying real property.

(b) When a home has become a part of the real property as provided in this part, it shall be unlawful for any person to remove such home from the real property except with the written consent of the owner of the real property and the holders of all security interests in the real property and in strict compliance with the requirements of Subpart 2 of this part. Any person who violates this subsection shall be guilty of a misdemeanor of a high and aggravated nature. (Code 1981, § 8-2-183, enacted by Ga. L. 2003, p. 430, § 1.)

**Subpart 2****Removal from Permanent Location****8-2-184. Reversion of manufactured or mobile home to personal property; Certificate of Removal from Permanent Location required.**

(a) A home which has previously become real property shall become personal property if:

(1) The manufactured home or mobile home is or is to be removed from the real property with the written consent of the owner of the real property and the holders of all security interests therein; and

(2) The owner of the real property and the holders of all security interests therein execute and file a Certificate of Removal from Permanent Location:

(A) With the commissioner of motor vehicle safety; and

(B) In the real estate records of the county where the real property is located.

(b) The Certificate of Removal from Permanent Location shall be in a form prescribed by the commissioner of motor vehicle safety and shall include:

(1) The name and address of the owner;



(2) The names and addresses of the holders of any security interest and of any lien;

(3) The title number formerly assigned to the home;

(4) A description of the real estate on which the home was previously located, including the name of the owner and a reference by deed book and page number to the recording of the former certificate of permanent location; and

(5) Any other data the commissioner of motor vehicle safety prescribes. (Code 1981, § 8-2-184, enacted by Ga. L. 2003, p. 430, § 1.)

**8-2-185. Responsibilities of commissioner of motor vehicle safety following receipt of Certificate of Removal from Permanent Location.**

(a) Upon receipt of a properly executed Certificate of Removal from Permanent Location, the commissioner of motor vehicle safety shall file and retain a copy of such certificate together with all other prior title records related to the home and may thereafter issue a new certificate of title for the home. The commissioner of motor vehicle safety shall charge and collect the fee otherwise prescribed by law for the issuance of a certificate of title.

(b) When a Certificate of Removal from Permanent Location is so filed, the commissioner of motor vehicle safety shall return to the filing party the original of the certificate containing thereon confirmation by the commissioner of motor vehicle safety that the certificate has been so filed. (Code 1981, § 8-2-185, enacted by Ga. L. 2003, p. 430, § 1.)

**8-2-186. Responsibilities of clerk of superior court upon receipt of Certificate of Removal from Permanent Location.**

(a) The clerk of superior court shall not accept a Certificate of Removal from Permanent Location for filing unless the certificate contains thereon the confirmation by the commissioner of motor vehicle safety that the certificate has been filed with the commissioner of motor vehicle safety.

(b) When a Certificate of Removal from Permanent Location is properly filed with the clerk of superior court, the clerk shall record such certificate in the same manner as other instruments affecting the real property described in the certificate and shall charge and collect the fees usually charged for recording deeds and other instruments relating to real estate. Such certificate shall be indexed under the name of the current owner of the real property in both the grantor and grantee indexes. (Code 1981, § 8-2-186, enacted by Ga. L. 2003, p. 430, § 1.)

## Subpart 3

## Destruction of Manufactured Homes

**8-2-187. Certificate of destruction and requirements for issuance.**

(a) When a home which has previously become real property has been or is to be destroyed, the owner of the real property and the holders of all security interests therein shall execute and file a Certificate of Destruction:

(1) With the commissioner of motor vehicle safety; and

(2) In the real estate records of the county where the real property is located.

(b) The Certificate of Destruction shall be in a form prescribed by the commissioner of motor vehicle safety and shall include:

(1) The name and address of the owner;

(2) The names and addresses of the holders of any security interest and of any lien;

(3) The title number formerly assigned to the home;

(4) A description of the real estate on which the home was previously located, including the name of the owner and a reference by deed book and page number to the recording of the former certificate of permanent location;

(5) Verification of the destruction by a law enforcement officer; and

(6) Any other data the commissioner of motor vehicle safety prescribes. (Code 1981, § 8-2-187, enacted by Ga. L. 2003, p. 430, § 1.)

**8-2-188. Retention of titles by commissioner of motor vehicle safety.**

(a) Upon receipt of a properly executed Certificate of Destruction, the commissioner of motor vehicle safety shall file and retain a copy of such certificate together with all other prior title records related to the home.

(b) When a Certificate of Destruction is so filed, the commissioner of motor vehicle safety shall issue to the filing party the original of the certificate containing thereon confirmation by the commissioner of motor vehicle safety that the certificate has been so filed. (Code 1981, § 8-2-188, enacted by Ga. L. 2003, p. 430, § 1.)

**8-2-189. Requirements for filing with clerk of superior court.**

(a) The clerk of superior court shall not accept a Certificate of Destruction for filing unless the certificate contains thereon the confirmation by

the commissioner of motor vehicle safety that the certificate has been filed with the commissioner of motor vehicle safety.

(b) When a Certificate of Destruction is properly filed with the clerk of superior court, the clerk shall record such certificate in the same manner as other instruments affecting the real property described in the certificate and shall charge and collect the fees usually charged for recording deeds and other instruments relating to real estate. Such certificate shall be indexed under the name of the current owner of the real property in both the grantor and grantee indexes. (Code 1981, § 8-2-189, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2004, p. 631, § 8.)

**The 2004 amendment**, effective May 13, 2004, part of an Act to revise, modernize and correct the Code, in subsection (b), substi-

tuted "Certificate of Destruction" for "certificate of destruction".

## Subpart 4

### Fees

#### **8-2-190. Taxation as real property.**

A manufactured or mobile home which constitutes real property shall not be subject to Article 10 of Chapter 5 of Title 48 but shall instead be taxed as real property and a part of the underlying real estate. (Code 1981, § 8-2-190, enacted by Ga. L. 2003, p. 430, § 1.)

#### **8-2-191. Filing fee.**

The commissioner of motor vehicle safety shall charge a fee of \$18.00 for any filing under this part. (Code 1981, § 8-2-191, enacted by Ga. L. 2003, p. 430, § 1.)

## ARTICLE 3

### APPLICATION OF BUILDING AND FIRE RELATED CODES TO EXISTING BUILDINGS

#### **8-2-200. Short title.**

This article shall be known and may be cited as "The Uniform Act for the Application of Building and Fire Related Codes to Existing Buildings." (Code 1981, § 8-2-200, enacted by Ga. L. 1984, p. 1160, § 1.)

#### **8-2-201. Purpose and applicability of article.**

(a) It is a purpose of this article to encourage the sensitive rehabilitation, restoration, stabilization, or preservation of existing buildings throughout



this state and to encourage the preservation of buildings and structures deemed to be historic in total or in part; provided, however, such rehabilitation and preservation efforts should provide for the upgrading of the safety features of the building or structure to provide a practical level of safety to the public and surrounding property. It is the further purpose of this article to provide guidance regarding acceptable alternative solutions and to stimulate enforcement authorities to utilize alternative compliance concepts wherever practical to permit the continued use of existing buildings and structures without overly restrictive financial burdens on owners or occupants.

(b) The provisions of this article shall not be applicable to new construction. (Code 1981, § 8-2-201, enacted by Ga. L. 1984, p. 1160, § 1.)

### **8-2-202. Definitions.**

As used in this article, the term:

(1) “Enforcement authority” means the Safety Fire Commissioner, the state fire marshal, local building officials, local fire marshals, or any other state or local officials responsible for the implementation, application, or enforcement of any state law or local ordinance relating to building construction, or any state or local rule or regulation relating to building construction, or any building, mechanical, electrical, plumbing, life safety or fire prevention codes, or other construction standards that apply or are intended to apply to existing buildings. The term “enforcement authority” also means any local official designated by the local governing authority as the enforcement authority for the purposes of this article.

(2) “Existing building or structure” means any completed building or structure which has been placed in service for a minimum of five years.

(3) “Safety Fire Commissioner” or “Commissioner” means the office created in Code Section 25-2-2. (Code 1981, § 8-2-202, enacted by Ga. L. 1984, p. 1160, § 1.)

### **8-2-203. Effect of article on state and local enforcement authorities.**

The provisions of this article shall be mandatory and binding on the state fire marshal, the Safety Fire Commissioner, and other state officials responsible for state building code, fire code, life safety code, or other construction code enforcement. This article is not mandatory or binding on local enforcement authorities; provided, however, that any local building, fire, life safety, plumbing, electrical, mechanical, or other construction code enforcement authority may apply the applicable provisions of this article to any existing building whenever the local governing authority has adopted this article by reference and whenever such local code enforcement authority determines the need to utilize compliance alternatives to

any provisions of the rules, regulations, codes, or standards he or she is empowered to interpret, apply, or enforce under authority of any state law or local ordinance. This article is a tool for use of code enforcement authorities to use as deemed appropriate in attempting to resolve problems encountered while enforcing codes and standards with regard to existing buildings and structures. Enforcement authorities should advise appropriate appeals boards of the provisions, purposes, and intent of this article. (Code 1981, § 8-2-203, enacted by Ga. L. 1984, p. 1160, § 1.)

**8-2-204. Alteration or repair without total compliance with new construction requirements.**

The provisions of this article shall require any state code enforcement authority and shall permit any authorized local code enforcement authority to permit the repair, alteration, addition, or change of use or occupancy of existing buildings without total compliance with any state or local rule, regulation, code, or standard for new construction requirements under the following general conditions:

(1) All noted conditions hazardous to life, based on the provisions of applicable state and local standards or codes for existing buildings, shall be corrected to a reasonable and realistic degree as set forth in this article, with specific attention to Code Sections 8-2-214 through 8-2-219;

(2) The existing building becomes the minimum performance standard; and

(3) The degree of compliance of the building after changes must not be below that existing before the changes. Nothing in this article will require nor prohibit compliance with requirements more stringent than those provided in this article. (Code 1981, § 8-2-204, enacted by Ga. L. 1984, p. 1160, § 1.)

**8-2-205. Identification and correction of certain conditions or defects.**

With reference to existing buildings, authorized enforcement authorities should give special attention to the conditions or defects described in this Code section in accordance with the provisions of Code Section 8-2-204, so as to assure any such conditions or defects are identified and corrected as deemed appropriate by the enforcement authority having jurisdiction based on applicable state and local codes and through the utilization of appropriate compliance alternatives:

(1) Structural. Any building or structure or portion thereof which is in imminent danger of collapse because of but not limited to the following factors:

(A) Dilapidation, deterioration, or decay;

(B) Faulty structural design or construction;

(C) The removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; or

(D) The deterioration, decay, or inadequacy of the foundation;

(2) Number of exits. Less than two approved independent, remote, and properly protected exit ways serving every story of a building, except where a single exit way is permitted by the applicable state or local fire or building code or life safety code;

(3) Capacity of exits. Any required door, aisle, passageway, stairway, or other required means of egress which is not of sufficient capacity to provide for the population of the portions of the building served and which is not so arranged as to provide safe and adequate means of egress to a place of safety; and

(4) Mechanical systems. Utilities and mechanical systems not in conformance with the codes in effect at the time of construction of a building which create a serious threat of fire or threaten the safety of the occupants of the building. (Code 1981, § 8-2-205, enacted by Ga. L. 1984, p. 1160, § 1.)

#### **8-2-206. Consideration of compliance alternatives.**

Code Sections 8-2-207 through 8-2-211 contain generally acceptable compliance alternatives illustrating principles which shall be applied to the rehabilitation of existing buildings by state enforcement authorities and which may be applied by authorized local enforcement authorities in Georgia. It is recognized for purposes of this article that all building systems interact with each other; therefore, any consideration of compliance alternatives should take into account all existing and proposed conditions to determine their acceptability. The compliance alternatives are not all-inclusive and do not preclude consideration and approval of other alternatives by any enforcement authority. (Code 1981, § 8-2-206, enacted by Ga. L. 1984, p. 1160, § 1.)

#### **8-2-207. Compliance alternatives for inadequate number of exits.**

Compliance alternatives for an inadequate number of exits include, but are not limited to, the following:

(1) Provide connecting fire-exit balconies acceptable to the enforcement authority between buildings;

(2) Provide alternate exit or egress facilities leading to safety outside the building or to a place of safe refuge in the building or an adjoining building as acceptable to the enforcement authority;



(3) Provide an exterior fire escape or escapes as acceptable to the enforcement authority where the providing of enclosed interior or enclosed exterior stairs is not practical; or

(4) Install early fire warning and fire suppression systems. (Code 1981, § 8-2-207, enacted by Ga. L. 1984, p. 1160, § 1.)

**8-2-208. Compliance alternatives for excessive travel distances to approved exit.**

Compliance alternatives for excessive travel distances to an approved exit include, but are not limited to, the following:

(1) Install an approved smoke detection system throughout the building;

(2) Install an approved complete automatic fire suppression system;

(3) Subdivide the exit travel route with smoke-stop doors acceptable to the enforcement authority;

(4) Increase the fire resistance rating of corridor walls and doors; or

(5) Provide additional approved means of escape. (Code 1981, § 8-2-208, enacted by Ga. L. 1984, p. 1160, § 1.)

**8-2-209. Compliance alternatives for unenclosed or improperly enclosed exit stairways or vertical shafts.**

Compliance alternatives for unenclosed or improperly enclosed exit stairways or vertical shafts include, but are not limited to, the following:

(1) Improve enclosure of exit stairway;

(2) Add a partial fire suppression system;

(3) Add a sprinkler draft curtain; or

(4) Add a smoke detection system. (Code 1981, § 8-2-209, enacted by Ga. L. 1984, p. 1160, § 1.)

**RESEARCH REFERENCES**

**ALR.** — Validity and construction of statute or ordinance requiring installation of automatic sprinklers, 63 ALR5th 517.

**8-2-210. Compliance alternatives for inadequate fire partitions or walls.**

Compliance alternatives for inadequate or a total lack of fire partitions or fire separation walls shall be as set forth in Code Section 8-2-209. (Code 1981, § 8-2-210, enacted by Ga. L. 1984, p. 1160, § 1.)

**8-2-211. Compliance alternatives for lack of required protection of openings in exterior walls.**

Compliance alternatives for a lack of required protection of openings in exterior walls where a fire exposure is a risk include, but are not limited to, the following:

- (1) Improve fire resistance of existing openings and protect them with fire-rated windows or doors as appropriate;
- (2) Seal the openings with fire-rated construction as approved by the enforcement authority; or
- (3) Install an approved fire suppression system. (Code 1981, § 8-2-211, enacted by Ga. L. 1984, p. 1160, § 1.)

**Code Commission notes.** — Pursuant to was substituted for “resistence” in para-Code Section 28-9-5, in 1985, “resistance” graph (1).

**8-2-212. Filing of approved compliance alternatives.**

Whenever action is taken on any existing building to repair, make alterations, or change the use or occupancy of an existing structure and, when said action proposes the use of compliance alternatives, the authorized enforcement authority shall ensure that at least one copy of the accepted compliance alternatives approved, including applicable plans, test data, or other data submitted for evaluation, be maintained on file in the office of the local enforcement authority. If said structure also falls under the jurisdiction of a state level enforcement authority, at least one copy of same material shall be maintained on file with that authority. (Code 1981, § 8-2-212, enacted by Ga. L. 1984, p. 1160, § 1.)

**8-2-213. Final review of projects; agreement of local authorities.**

Where an existing building or structure falls within the jurisdiction of both state level and local level enforcement authorities, the final review of any part of the project which is under the jurisdiction of both such enforcement authorities shall occur with the state authority; provided, however, the local fire and building authorities must agree in writing with any compliance alternatives before such can be approved by the state authority. It is the intent of this Code section that the state enforcement authority be very liberal in the consideration and approval of compliance alternatives which have the documented support of local enforcement authorities. (Code 1981, § 8-2-213, enacted by Ga. L. 1984, p. 1160, § 1.)

**8-2-214. Additions.**

Additions to an existing building shall comply with the applicable requirements of state and local laws, rules, regulations, codes, and stan-

dards for new construction. Such additions shall not impose loads either vertical or horizontal which would cause the existing building to be subjected to stresses exceeding those permitted under new construction. If the existing building does not comply with the standards provided in this article and the authorized enforcement authority finds that the addition adversely affects the performance of the total building, the authorized enforcement authority may require:

- (1) The new addition to be separated from the existing structure by at least a two-hour fire wall with openings therein properly protected; or
- (2) The installation of an approved automatic fire suppression system; or
- (3) Other remedies which may be deemed appropriate by the enforcement authority. (Code 1981, § 8-2-214, enacted by Ga. L. 1984, p. 1160, § 1.)

**8-2-215. Minor alterations or repairs; reduction or removal of features; alteration or repair without further compliance; installation of mechanical systems.**

Minor alterations or repairs to an existing building which do not adversely affect the performance or safety of the building may be made with the same or like materials. Existing buildings which, in part or as a whole, exceed the requirements of any applicable construction or fire safety code, may, in the course of compliance with this article, have reduced or removed, in part or total, features not required by such code for new construction; provided, however, that such features were not a condition of prior approval. Existing buildings and structures which, in part or as a whole, do not meet the requirements of the applicable code for new construction may be altered or repaired without further compliance to any such code by utilizing the provisions of this article, provided their present degree of compliance to any applicable construction or fire safety code is not reduced. Any new mechanical systems installed in an existing building shall conform to applicable codes for new construction to the fullest extent practical as approved by the authorized enforcement authorities. (Code 1981, § 8-2-215, enacted by Ga. L. 1984, p. 1160, § 1.)

**8-2-216. Continuation of legal use and occupancy.**

The legal use and occupancy of any building or structure may be continued without change, except as may be provided otherwise by this article or as may be legally provided for by any applicable state or local law, ordinance, rule, regulation, code, or standard. (Code 1981, § 8-2-216, enacted by Ga. L. 1984, p. 1160, § 1.)



**8-2-217. Total change in use or occupancy.**

(a) A total change in the use or occupancy of an existing building which would cause a greater hazard to the public shall not be made unless such building is made to comply with the requirements of the applicable state and local rules, regulations, codes, and standards for the new use or occupancy; provided, however, the compliance alternative provisions of this article may be utilized by authorized enforcement authorities where total or strict compliance with applicable state or local rules, regulations, codes, or standards is not practical.

(b) When the proposed use is of equal or lesser hazard as determined by an authorized enforcement authority, further compliance with any code for new construction is not required unless otherwise provided in this article. Alterations or repairs to an existing building or structure which do not adversely affect the performance of the building may be made with like materials. Any proposed change to the existing building or change in type of contents of the existing building shall not increase the fire hazard to adjacent buildings or structures. If the fire hazard to adjacent buildings or structures is increased, then requirements of applicable construction or fire safety codes for exterior walls shall apply. (Code 1981, § 8-2-217, enacted by Ga. L. 1984, p. 1160, § 1; Ga. L. 1985, p. 149, § 8.)

**8-2-218. Change of portion of building to new use or occupancy.**

(a) If a portion of a building is changed to a new use or occupancy and that portion is separated from the remainder of the building with vertical or horizontal fire separations complying with applicable state or local rules, regulations, codes, or standards or with compliance alternatives, then the portion changed shall be made to comply to the applicable requirements for the new use or occupancy to the extent noted in Code Section 8-2-217.

(b) If a portion of the building is changed to a new use or occupancy and that portion is not separated from the remainder of the building as noted in subsection (a) of this Code section, then the provisions of the applicable state and local rules, regulations, codes, and standards applying to each use or occupancy of the building shall apply to the entire building to the extent noted in Code Section 8-2-217; provided, however, if there are conflicting provisions in requirements for the various uses or occupancies, the authorized enforcement authority shall apply the strictest requirements. (Code 1981, § 8-2-218, enacted by Ga. L. 1984, p. 1160, § 1.)

**8-2-219. Changes which increase floor loading.**

Any proposed change in the use or occupancy of an existing building or portion thereof which could increase the floor loading should be investigated by a Georgia registered professional engineer to determine the

adequacy of the existing floor system to support the increased loads. If the existing floor system is found to be inadequate, it should be modified to support the increased loads or the proposed allowable floor loading shall be reduced by and posted by the appropriate enforcement authority. (Code 1981, § 8-2-219, enacted by Ga. L. 1984, p. 1160, § 1.)

#### **8-2-220. Rules and regulations.**

The Safety Fire Commissioner shall promulgate reasonable rules and regulations to implement and carry out the requirements of this article. (Code 1981, § 8-2-220, enacted by Ga. L. 1984, p. 1160, § 1.)

#### **8-2-221. Appeals of rulings or decisions.**

Should any person, firm, corporation, or other entity be dissatisfied with any ruling or decision of the state fire marshal pursuant to the provisions of this article, the right is granted to appeal within ten days to the Commissioner. If the person, firm, corporation, or other entity is dissatisfied with the decision of the Commissioner, appeal is authorized to the superior court within 30 days in the manner provided under Chapter 13 of Title 50. In the event of such appeal, the person, firm, corporation, or other entity shall give a surety bond which will be conditioned upon compliance with the order and direction of the state fire marshal or the Commissioner or both. The amount of bond shall be fixed by the Commissioner in such amount as will reasonably cover the order issued by the Commissioner or the state fire marshal or both. (Code 1981, § 8-2-221, enacted by Ga. L. 1984, p. 1160, § 1.)

#### **8-2-222. Immunity of state and local entities; liability of property owner or user.**

Nothing in this article shall be construed to constitute a waiver of the sovereign immunity of the state or any officer or employee thereof in carrying out the provisions of this article. Further, no action shall be maintained against the state, any municipality, county, or any duly authorized elected or appointive officer or duly authorized employee thereof, for damages sustained as a result of any fire or hazard covered by this article by reason of inspection or other action taken or not taken pursuant to this article. Nothing in this article shall be construed to relieve any property owner or lessee or person in charge thereof from any legal duty, obligation, or liability incident to the ownership, maintenance, or use of such property. (Code 1981, § 8-2-222, enacted by Ga. L. 1984, p. 1160, § 1.)

CHAPTER 3

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**Cross references.** — Relocation of persons and businesses displaced by federal-aid public works projects, Ch. 4, T. 22. Development authorities of counties and municipalities, Ch. 62, T. 36.

**Law reviews.** — For comment, "Critical Housing Needs and the Emergency Low Income Housing Preservation Act of 1987: A Short-Term Solution to a Long-Term Problem," see 40 Emory L.J. 163 (1991).

#### RESEARCH REFERENCES

**C.J.S.** — 39A C.J.S. (Rev), Health and Environment, § 62 et seq.

**ALR.** — Validity of statute, ordinance, or

regulation requiring compliance with housing standards before rent increase or possession by new tenant, 20 ALR4th 1246.

#### ARTICLE 1

##### HOUSING AUTHORITIES

**Cross references.** — Cooperation by cities, counties, etc., in aid of construction, operation, etc., of housing projects undertaken by municipal, county, etc., housing authorities, § 8-3-150 et seq.

**Editor's notes.** — Georgia L. 1937, p. 210,

as amended, the basis for this article, has been the subject of a number of validating acts by which the General Assembly has "validated, ratified, confirmed, approved, and declared legal" the establishment and organization of housing authorities; con-



tracts and agreements entered into by housing authorities; actions with regard to the issuance of bonds; and various other specified actions taken by housing authorities prior to the date of each such validating act. See Ga. L. 1939, p. 126, §§ 1-3; Ga. L. 1951, p. 127, §§ 1-3; Ga. L. 1959, p. 141, §§ 1-3; Ga. L. 1962, p. 734, §§ 1-3; and Ga. L. 1971, p. 94, § 1. None of these validating acts is codified. However, these acts have been indicated in the history citations for the sections in this article to which they appear to relate most directly. See the history citations for Code Sections 8-3-4, 8-3-6, 8-3-30, 8-3-32,

8-3-33, 8-3-50, 8-3-51, 8-3-70, 8-3-71, 8-3-73, 8-3-74, 8-3-77, 8-3-79, 8-3-81, 8-3-100, 8-3-104, 8-3-105, 8-3-106, 8-3-107, 8-3-108, 8-3-109, 8-3-134, 8-3-136, and 8-3-137. For case construing 1939 validating act (Ga. L. 1939, p. 126, §§ 1-3), see *Hogg v. City of Rome*, 189 Ga. 298, 6 S.E.2d 48 (1939).

**Law reviews.** — For article, "Tax-Exempt Financing of Section 8 Housing Projects," see 15 Ga. St. B.J. 68 (1978).

For note, "The Legal Nature of Public Purpose Authorities: Governmental, Private, or Neither," see 8 Ga. L. Rev. 680 (1974).

## JUDICIAL DECISIONS

**As to constitutionality of O.C.G.A. Art. 1, Ch. 3, T. 8,** see *Williamson v. Housing Auth.*, 186 Ga. 673, 199 S.E. 43 (1938); *Barber v. Housing Auth.*, 189 Ga. 155, 5 S.E.2d 425 (1939); *Telford v. City of Gainesville*, 208 Ga. 56, 65 S.E.2d 246 (1951); *Howard v. Housing Auth.*, 220 Ga. 640, 140 S.E.2d 880 (1965).

**The purpose of O.C.G.A. Art. 1, Ch. 3, T. 8** is to ratify and place a stamp of approval upon the past acts of the various housing authorities. That article does not have the effect of "updating" the housing authority laws. *Oxford v. Housing Auth.*, 104 Ga. App. 797, 123 S.E.2d 175 (1961).

**Requirement of strict observance of statutes.** — In proceedings under statute authority whereby a person may be deprived of that person's property, statute must be strictly pursued. Compliance with all its prerequisites must be shown. *Cobb v. Housing Auth.*, 210 Ga. 676, 82 S.E.2d 848 (1954).

Taking or injuring of private property for public benefit is exercise of a high power, and all conditions and limitations provided by law under which it may be done should be closely followed. *Cobb v. Housing Auth.*, 210 Ga. 676, 82 S.E.2d 848 (1954).

**Cited** in *Virginia-Carolina Chem. Co. v. Willoughby*, 66 Ga. App. 900, 19 S.E.2d 816 (1942); *Emerson v. Southwest Ga. Regional Hous. Auth.*, 196 Ga. 675, 27 S.E.2d 334 (1943); *Banks v. Housing Auth.*, 79 Ga. App. 313, 53 S.E.2d 595 (1949); *Housing Auth. v. Curry Realty Co.*, 86 Ga. App. 527, 71 S.E.2d 898 (1952); *Hospital Auth. v. Stewart*, 226 Ga. 530, 175 S.E.2d 857 (1970); *Brown v. Housing Auth.*, 240 Ga. 647, 242 S.E.2d 143 (1978); *Billington v. Underwood*, 613 F.2d 91 (5th Cir. 1980); *Martin v. Housing Auth.*, 86 F.R.D. 320 (N.D. Ga. 1980).

## OPINIONS OF THE ATTORNEY GENERAL

**Exemption from state sales tax.** — Housing authorities are not exempt from the payment of state sales taxes upon purchases

made by them. 1952-53 Op. Att'y Gen. p. 476.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 40A Am. Jur. 2d, *Housing Laws and Urban Redevelopment*, § 10 et seq.

**ALR.** — *Constitutionality and construc-*

*tion of Emergency Price Control Act as relating to rent*, 155 ALR 1461; 156 ALR 1459; 157 ALR 1457; 158 ALR 1464.

## PART 1

## GENERAL PROVISIONS

**8-3-1. Short title.**

This article may be referred to as the "Housing Authorities Law." (Ga. L. 1937, p. 210, § 1.)

**8-3-2. Legislative findings and declaration of necessity.**

It is declared that there exist in the state unsanitary and unsafe dwelling accommodations; that persons of low income are forced to reside in such accommodations; that within the state there is a shortage of safe and sanitary dwelling accommodations available at rents which persons of low income can afford and that such persons are therefore forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the residents of the state and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection and other public services and facilities; that these distressed areas cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved, solely through the operation of private enterprise, and that the construction of housing projects for persons of low income, as such persons are defined in Code Section 8-3-3, would therefore not be competitive with private enterprise; that the clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired; and that it is in the public interest that work on such projects be commenced as soon as possible in order to relieve unemployment which now constitutes an emergency. The necessity in the public interest for the provisions enacted in this article is declared as a matter of legislative determination. (Ga. L. 1937, p. 210, § 2; Ga. L. 1996, p. 1417, § 1.)

## JUDICIAL DECISIONS

Cited in *Doe v. Sears*, 245 Ga. 83, 263 S.E.2d 119 (1980); *Thompson v. Crownover*, 259 Ga. 126, 381 S.E.2d 283 (1989).

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 40A Am. Jur. 2d, Housing  
Laws and Urban Redevelopment, §§ 1-3.

**8-3-3. Definitions.**

As used in this article, the term:

(1) “Area of operation,” in the case of a housing authority of a city, means such city and the area within ten miles of the territorial boundaries thereof but does not mean any area which lies within the territorial boundaries of any other city unless a resolution shall have been adopted by the governing body of such other city declaring that there is a need for the city housing authority to exercise its powers within the territorial boundaries of said other city. No city, county, regional, or consolidated authority shall operate in any area in which an authority already established is operating without the consent by resolution of the authority already operating therein.

(2) “Authority” or “housing authority” means any of the public corporations created by or pursuant to this article or any amendments thereto.

(3) “Bonds” means any bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this article.

(4) “City” means any city in the state. “The city” means the particular city for which a particular housing authority is created.

(5) “Clerk” means the clerk of the city or the clerk of the county, as the case may be, or the officer charged with the duties customarily imposed on such clerk.

(6) “County” means any county in the state. “The county” means the particular county for which a particular housing authority is created.

(7) “Dormitory housing project” means the construction, acquisition, remodeling, or improving of, or the adding to, any facility for use in connection with the housing of students at any member institution of the University System of Georgia.

(8) “Federal government” means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(9) “Governing body” means, in the case of a city, the council, commission, board of aldermen, or other legislative body of the city, and, in the case of a county, the judge of the probate court, the county commissioners, or other legislative body of the county.



(10) "Housing project" means:

(A) Any work or undertaking:

(i) To demolish, clear, or remove buildings from any slum area, including the adaptation of such area to public purposes such as parks or other recreational or community purposes;

(ii) To provide decent, safe, and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of low income, including the providing of buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, or gardening or for administrative, community, health, recreational, educational, welfare, or other purposes; provided, however, that a project which is or is expected to be subject to a private enterprise agreement shall qualify as a "housing project" within the meaning of this article if at least 20 percent of the project is occupied by persons of low income; or

(iii) To accomplish a combination of the foregoing; and

(B) The planning of the buildings and improvements; the acquisition of property; the demolition of existing structures; the construction, reconstruction, alteration, and repair of the improvements; and all other work in connection therewith.

(11) "Mayor" means the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor.

(12) "Obligee of the authority" or "obligee" means any bondholder, or the trustee or trustees for any bondholders; any lessor demising to the authority property used in connection with a housing project, or any assignee or assignees of such lessor's interest or any part thereof; and the federal government when it is a party to any contract with the authority.

(13) "Persons of low income" means persons or families who lack the income necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings without overcrowding.

(13.1) "Private enterprise agreement" means a contract between a housing authority and a person or entity operating for profit for:

(A) The management of a housing project;

(B) The development of and the provision of credit enhancement with respect to a housing project;

(C) The ownership of a housing project through the for profit entity in which the housing authority participates, either directly or indirectly through a wholly owned subsidiary, for purposes of facilitating the

development, provision of credit enhancement, operation, or management of such housing project in accordance with this article; or

(D) Any combination of any of the foregoing.

(14) “Real property” means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest, and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise, and the indebtedness secured by such liens.

(15) “Slum” means any area comprised predominantly of dwellings which are detrimental to safety, health, and morals by reason of dilapidation; overcrowding; faulty arrangement or design; lack of ventilation, light, or sanitary facilities; or any combination of these factors. (Ga. L. 1937, p. 210, § 3; Ga. L. 1939, p. 112, § 1; Ga. L. 1943, p. 146, §§ 1-4; Ga. L. 1951, p. 219, § 1; Ga. L. 1959, p. 65, § 2; Ga. L. 1987, p. 283, §§ 1, 2; Ga. L. 1996, p. 1417, § 2.)

### JUDICIAL DECISIONS

**Construction of “slum” and “housing project”.** — The terms “slum” and “housing project” cannot be construed to include the property of the condemnee sought to be taken, since such property is forest land, and to construe the terms “slum area” and “housing project,” to include this property would be contrary to 1945 Ga. Const., Art. XVI (see Ga. Const. 1983, Art. IX, Sec. II, Para. VII). *Howard v. Housing Auth.*, 220 Ga. 640, 140 S.E.2d 880 (1965).

**Cited in** *Emerson v. Southwest Ga. Re-*

*gional Hous. Auth.*, 196 Ga. 675, 27 S.E.2d 334 (1943); *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945); *Housing Auth. v. Ayers*, 211 Ga. 728, 88 S.E.2d 368 (1955); *Housing Auth. v. Hall*, 217 Ga. 856, 126 S.E.2d 223 (1962); *Brown v. Housing Auth.*, 240 Ga. 647, 242 S.E.2d 143 (1978); *Doe v. Sears*, 245 Ga. 83, 263 S.E.2d 119 (1980); *Housing Auth. of Atlanta v. Jefferson*, 225 Ga. App. 60, 476 S.E.2d 831 (1996).

### OPINIONS OF THE ATTORNEY GENERAL

**The geographic jurisdiction of a city housing authority** established under the Housing Authority Law is governed primarily by the definition of “area of operation” in O.C.G.A. § 8-3-3(1). 1997 Op. Att’y Gen. No. U97-22.

**Concurrent jurisdiction of housing authorities in overlapping areas.** — A city wherein a city housing authority has been activated and a county housing authority or a regional housing authority operating

within the county, in which such city is located, would have concurrent jurisdiction in said ten-mile area. 1950-51 Op. Att’y Gen. p. 95.

**Approvals by authority exercising concurrent jurisdiction not required.** — The housing authority undertaking a housing project in said ten-mile area need not obtain any approvals therefor from the other authority operating therein. 1950-51 Op. Att’y Gen. p. 95.

#### 8-3-3.1. Additional definitions.

As used in this article, the term:

(1) "Community facilities" means the land, buildings, improvements, and equipment for such recreational, community, educational, and commercial facilities as the authority determines improve the quality of an eligible housing unit.

(2) "Eligible housing unit" means real and personal property located in the state constituting single or multifamily dwelling units suitable for occupancy by low and moderate income families and such community facilities as may be incidental or appurtenant thereto; provided, however, that all multifamily dwelling units located within an apartment complex shall qualify as "eligible housing units" if at least 20 percent of the multifamily dwelling units within the complex are occupied by or are held available for occupancy by low and moderate income families.

(3) "Low and moderate income families" means persons and families of one or more persons, irrespective of race, creed, national origin, or sex determined by the authority to require such assistance as is made available by this article on account of insufficient personal or family income, taking into consideration, without limitation, such factors as:

(A) The amount of total income of such persons and families available for housing needs;

(B) The size of the families;

(C) The cost and condition of housing facilities available;

(D) The ability of such persons and families to compete successfully in the normal private housing market and to pay the amounts at which private enterprise is providing sanitary, decent, and safe housing; and

(E) If appropriate, standards established for various federal programs with respect to housing determining eligibility based on income of such persons and families.

(4) "Mortgage lenders" means national banking associations, banks chartered under the laws of the state, savings and building and loan associations chartered under the laws of the state or of the United States of America, the Federal National Mortgage Association, and federal or state credit unions. The term shall also include mortgage bankers and other financial institutions or governmental agencies which are authorized to deal in mortgages insured or guaranteed by the federal government and other entities authorized to extend loans for single or multifamily housing under the laws of the state.

(5) "Mortgage loans" means notes and other evidences of indebtedness secured by mortgages. .

(6) "Mortgaged property" means all properties, real, personal, and mixed, and all interests therein, including grants or subsidies with respect



thereto, mortgaged, pledged, or otherwise provided in any manner as security for mortgage loans or loans to mortgage lenders.

(7) "Mortgages" means security deeds, mortgages, deeds of trust, and other instruments granting security interests in real and personal properties constituting eligible housing units. (Ga. L. 1982, p. 2228, § 1; Code 1981, § 8-3-3.1, enacted by Ga. L. 1982, p. 2228, § 4; Ga. L. 1986, p. 797, § 1.)

**U.S. Code.** — The Federal National Mortgage Association, referred to in paragraph (4), is provided for in 12 U.S.C. § 1716 et seq.

### 8-3-4. Creation of housing authorities.

In each city and in each county of the state there is created a public body corporate and politic to be known as the "housing authority" of the city or county; provided, however, that such authority shall not transact any business or exercise its powers under this article until or unless the governing body of the city or the county, as the case may be, by proper resolution shall declare at any time hereafter that there is need for an authority to function in such city or county. The determination as to whether there is such need for an authority to function may be made by the governing body on its own motion or shall be made by the governing body upon the filing of a petition signed by 25 residents of the city or county, as the case may be, asserting that there is need for an authority to function in such city or county and requesting that the governing body so declare. (Ga. L. 1937, p. 210, § 4; Ga. L. 1939, p. 126, § 1; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1.)

## JUDICIAL DECISIONS

**Constitutionality.** — The Housing Authorities Law (see O.C.G.A. § 8-3-1 et seq.) does not violate Ga. Const. 1945, Art. I, Sec. I, Para. III (see Ga. Const. 1983, Art. I, Sec. I, Para. I) because it vests in the governing body of a municipality authority to determine its need for a housing authority without making any provision for notice to the citizens and taxpayers thereof, since the fact-finding power so lodged by the legislature in such governing body is a ministerial function only and not one judicial in char-

acter. *Telford v. City of Gainesville*, 208 Ga. 56, 65 S.E.2d 246 (1951).

**Instrumentality of state.** — A housing authority created by the Housing Authorities Law (see O.C.G.A. § 8-3-1 et seq.) is in effect an instrumentality of the state. *Knowles v. Housing Auth.*, 212 Ga. 729, 95 S.E.2d 659 (1956).

**Cited in** *DeJarnette v. Hospital Auth.*, 195 Ga. 189, 23 S.E.2d 716 (1942); *Brown v. Housing Auth.*, 240 Ga. 647, 242 S.E.2d 143 (1978).

## OPINIONS OF THE ATTORNEY GENERAL

A town which becomes a city subsequent to the passage of the Housing Authorities Law (see O.C.G.A. § 8-3-1 et seq.) would

have created therefor a housing authority at the time such town became a city. 1952-53 Op. Att'y Gen. p. 371.

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 11.

**8-3-5. Findings required before adoption of resolution.**

(a) A governing body shall adopt a resolution declaring that there is need for a housing authority in the city or county, as the case may be, if it shall find that insanitary or unsafe inhabited dwelling accommodations exist in such city or county or that there is a shortage of safe or sanitary dwelling accommodations in such city or county available to persons of low income at rentals they can afford.

(b) In determining whether dwelling accommodations are unsafe or insanitary, said governing body may take into consideration the degree of overcrowding; the percentage of land coverage; the light, air, space, and access available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions which endanger life or property by fire or other causes exist in such buildings. (Ga. L. 1937, p. 210, § 4.)

## JUDICIAL DECISIONS

**Constitutionality.** — The Housing Authorities Law (see O.C.G.A. § 8-3-1 et seq.) does not violate Ga. Const. 1945, Art. I, Sec. I, Para. III (see Ga. Const. 1983, Art. I, Sec. I, Para. I) because it vests in the governing body of a municipality authority to determine its need for a housing authority with-

out making any provision for notice to the citizens and taxpayers thereof, since the fact-finding power so lodged by the legislature in such governing body is a ministerial function only and not one judicial in character. *Telford v. City of Gainesville*, 208 Ga. 56, 65 S.E.2d 246 (1951).

## RESEARCH REFERENCES

**Am. Jur. 2d.** — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 12.

**8-3-6. Resolution as conclusive evidence of authority's establishment and authority.**

In any action or proceeding involving the validity or enforcement of, or otherwise relating to, any contract of an authority, the authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers under this article upon proof of the adoption of a resolution by the governing body declaring the need for the authority. Such resolution shall be deemed sufficient if it declares that there is need for an authority and finds in substantially such terms as appear in subsection (a) of Code Section 8-3-5, no further detail being necessary, that either or both of the conditions enumerated in that subsection exist in the city or county, as the case may be. A copy of such resolution duly certified

by the clerk shall be admissible in evidence in any action or proceeding. (Ga. L. 1937, p. 210, § 4; Ga. L. 1939, p. 126, § 1; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1.)

### JUDICIAL DECISIONS

**Cited** in *Telford v. City of Gainesville*, 208 Ga. 56, 65 S.E.2d 246 (1951).

### 8-3-7. Applicability of local laws, ordinances, and regulations to housing projects.

All housing projects of an authority shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the housing project is situated. (Ga. L. 1937, p. 210, § 13.)

### JUDICIAL DECISIONS

**Compliance with city ordinances, etc., is not condition precedent to condemnation.**

— Though the housing authority under Ga. L. 1937, p. 210, § 13 (see O.C.G.A. § 8-3-7) is amenable to the zoning ordinances of the city, a compliance by the defendant authority with such ordinances and regulations is not made a condition precedent to the condemning by the authority of private property by exercise of the power of eminent domain, and the fact that property sought to be condemned has not been zoned by the municipality for the use contemplated by the

authority is not a valid ground or reason to enjoin it from proceeding with the project. *West v. Housing Auth.*, 211 Ga. 133, 84 S.E.2d 30 (1954).

**Duty to inspect for smoke detectors.** — In its capacity as administrator of a federal housing program, when qualifying a house, a city housing authority was considered an “owner” under an applicable city ordinance and thus had a duty to inspect the dwelling and, if necessary, provide a smoke detector. *Housing Auth. of Atlanta v. Jefferson*, 225 Ga. App. 60, 476 S.E.2d 831 (1996).

### RESEARCH REFERENCES

**ALR.** — Exclusionary zoning, 48 ALR3d 1210.

Retroactive effect of zoning regulation, in absence of saving clause, on pending application for building permit, 50 ALR3d 596.

Validity of statutes, ordinances, and regulations requiring the installation or maintenance of various bathroom facilities in dwelling units, 79 ALR3d 716.

Validity of statutory classifications based on population — zoning, building, and land use statutes, 98 ALR3d 679.

Applicability of zoning regulations to governmental projects or activities, 53 ALR5th 1.

### 8-3-8. Exemption of authorities and their property from taxes and special assessments; payments in lieu of taxes and special assessments.

The property of an authority is declared to be public property used for essential public and governmental purposes and not for purposes of private or corporate benefit and income. That portion of any housing project



subject to a private enterprise agreement contemplated by subparagraph (C) of paragraph (13.1) of Code Section 8-3-3 consisting of the eligible housing units therein that are occupied or reserved for occupancy by persons of low income is declared to be public property used for essential public and governmental purposes and not for purposes of private or corporate benefit or income. Therefore, an authority and its property, as well as only that portion of any housing project subject to a private enterprise agreement contemplated by subparagraph (C) of paragraph (13.1) of Code Section 8-3-3 consisting of the eligible housing units therein that are occupied or reserved for occupancy by persons of low income, shall be exempt from all taxes and special assessments of the city, the county, and the state or any political subdivision thereof, provided that, in lieu of such taxes or special assessments, an authority may agree to make payments to the city or the county or any such political subdivision for improvements, services, and facilities furnished by such city, county, or political subdivision for the benefit of a housing project; but in no event shall such payments exceed the estimated cost to such city, county, or political subdivision of the improvements, services, or facilities to be so furnished. (Ga. L. 1937, p. 210, § 21; Ga. L. 1996, p. 1417, § 3.)

### JUDICIAL DECISIONS

**Constitutionality.** — See *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945).

### OPINIONS OF THE ATTORNEY GENERAL

**“Property”.** — The word “property” includes real and personal property. 1952-53 Op. Att’y Gen. p. 421.

**Funds as public funds.** — The funds of a local housing authority held exclusively for a public purpose are public funds within the meaning of former Code 1933, §§ 89-812 and 89-813 (see §§ 45-8-13 and 45-8-15). 1957 Op. Att’y Gen. p. 7.

**Payment of sums in lieu of taxes not required.** — The language of Ga. L. 1937, p. 210, § 13 (see O.C.G.A. § 8-3-8) indicates that there is nothing which would compel the housing authority to pay any sums in lieu of taxes. 1963-65 Op. Att’y Gen. p. 76.

**Housing authorities are exempt from ad**

**valorem taxation.** 1960-61 Op. Att’y Gen. p. 9.

**Sales taxes.** — Housing authorities are not exempt from the payment of state sales taxes upon purchases made by them. 1952-53 Op. Att’y Gen. p. 476.

**Purchase and pledge of securities for repayment of deposit by state bank.** — A state bank may purchase obligations of a public housing agency and pledge them as security for the repayment of a deposit of funds made with the bank by the housing agency provided the purchase of such obligations does not exceed 10 percent of the capital and unimpaired surplus of the bank. 1957 Op. Att’y Gen. p. 7.

### RESEARCH REFERENCES

**C.J.S.** — 84 C.J.S. (Rev), Taxation, § 323 et seq.

**ALR.** — Exemption of property or bonds

of housing authority from taxation, 133 ALR 365; 152 ALR 239.

**8-3-9. Filing reports with clerk; recommending legislation or other necessary action.**

At least once a year, an authority shall file with the clerk a report of its activities for the preceding year and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this article. (Ga. L. 1937, p. 210, § 22.)

**8-3-10. Vesting of fee simple title upon an authority's exercise of power of eminent domain.**

Whenever a housing authority is or has been created under the terms of this article, and whenever it is determined by the commissioners or other governing body of such authority to be necessary or advisable to exercise the power of eminent domain by condemning property, and whenever such condemnation proceedings are instituted and carried on under Chapter 2 of Title 22 or through any other method of condemnation provided by law, then upon the payment by such authority seeking condemnation of the amount of the award, or the amount of the final judgment on appeal, such authority shall become vested with a fee simple indefeasible title to the property to which such condemnation proceedings relate. It is declared to be necessary in order to enable such authorities to exercise their franchise that, upon such condemnation proceedings being had, such housing authorities shall become vested with fee simple indefeasible title to the property involved in such proceedings. (Ga. L. 1939, p. 112, § 7.)

**JUDICIAL DECISIONS**

**Cited in** *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945).

**RESEARCH REFERENCES**

**ALR.** — Eminent domain: possibility of overcoming specific obstacles to contemplated use as element in determining existence of necessary public use, 22 ALR4th 840.

**8-3-11. Renting of housing units — Requirements as to fixing of rentals by authorities generally.**

It is declared to be the policy of this state that each housing authority shall manage and operate its housing projects or, in the event of its use of a private enterprise agreement, shall cause each housing project subject thereto to be managed and operated in an efficient manner so as to enable it to fix the rentals for dwelling accommodations for persons of low income at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations for persons of low income, and that no

housing authority shall construct or operate the dwelling accommodations in any such project that are occupied or reserved for occupancy by persons of low income for a profit or as a source of revenue to the city or the county. To this end, an authority shall fix the rentals for those dwelling accommodations in such housing projects that are occupied or reserved for occupancy by persons of low income at no higher rates than it shall find necessary in order to produce revenues which, together with all other available moneys, revenues, income, and receipts of the authority from whatever sources derived, will be sufficient:

(1) To pay, as the same become due, the principal of and the interest on the bonds of the authority which from time to time are outstanding;

(2) To meet the cost of maintaining and operating the eligible housing units in such projects that are used, occupied, or reserved for use or occupancy by persons of low income, including the cost of any insurance; to meet the administrative expenses of the authority; and to provide reasonable reserves for maintenance and operating expenses; and

(3) To create and maintain such reasonable reserves as may be required in connection with the issuance of any bonds of the authority now outstanding or hereafter issued, and to create and maintain reasonable reserves for its future operations. (Ga. L. 1937, p. 210, § 9; Ga. L. 1959, p. 65, § 1; Ga. L. 1996, p. 1417, § 4.)

#### JUDICIAL DECISIONS

**Housing projects to be managed efficiently.** — Each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its pro-

viding decent, safe and sanitary dwelling accommodations. *Housing Auth. v. Davis*, 158 Ga. App. 600, 281 S.E.2d 345 (1981).

**Cited in** *Williams v. Housing Auth.*, 223 Ga. 407, 155 S.E.2d 923 (1967); *Doe v. Sears*, 245 Ga. 83, 263 S.E.2d 119 (1980).

#### RESEARCH REFERENCES

**C.J.S.** — 87 C.J.S. (Rev), Towns, § 184 et seq.

### 8-3-12. Dwelling accommodations for persons of low income; duties with respect to rentals and tenant selection.

(a) In the operation or management of housing projects, an authority shall at all times observe or cause to be observed the following duties with respect to rentals and tenant selection in those dwelling accommodations that are reserved for occupancy by persons of low income:

(1) It may rent or lease such dwelling accommodations only to persons of low income;



(2) It may rent or lease such dwelling accommodations only at rentals within the financial reach of such persons of low income;

(3) It may rent or lease such dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed low-income occupants thereof without overcrowding;

(4) It shall not accept any person as a tenant in such dwelling accommodations if the person or persons who would occupy the dwelling accommodations have, at the time of admission, an aggregate annual net income, less an exemption of \$100.00 for each minor member of the family other than the head of the family and his or her spouse, in excess of five times the annual rental of the dwelling accommodation to be furnished such person or persons. In computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost to the occupants, as determined by the authority, of heat, water, electricity, gas, cooking range, and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental; and

(5) It shall prohibit subletting by low-income tenants.

(b) Nothing contained in this Code section or Code Section 8-3-11 shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority or by any for profit entity in which the authority participates, directly or indirectly, through a private enterprise agreement, to take possession of a housing project or cause the appointment of a receiver thereof or acquire title thereto through foreclosure proceedings, free from all the restrictions imposed by this Code section or Code Section 8-3-11, provided that an authority may agree to conditions as to tenant eligibility or preference required by the federal government pursuant to federal law in any contract for financial assistance with the authority. (Ga. L. 1937, p. 210, § 10; Ga. L. 1939, p. 112, § 4; Ga. L. 1951, p. 219, § 5; Ga. L. 1996, p. 1417, § 5.)

**Cross references.** — Criminal penalty for fraudulently obtaining or attempting to obtain public housing or reduction in public housing rent, § 16-9-55.

JUDICIAL DECISIONS

**Cited in** Culbreth v. Southwest Ga. Regional Hous. Auth., 199 Ga. 183, 33 S.E.2d 684 (1945); Telford v. City of Gainesville, 208 Ga. 56, 65 S.E.2d 246 (1951); West v. Housing Auth., 211 Ga. 133, 84 S.E.2d 30 (1954).

RESEARCH REFERENCES

**Am. Jur. 2d.** — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 32 et seq.

**8-3-13. Cooperation and joint operation by authorities.**

(a) Any two or more authorities may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing (including the issuance of bonds, notes, or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating, or contracting with respect to a housing project or projects located within the area of operation of any one or more of said authorities. For such purpose, an authority may by resolution prescribe and authorize any other housing authority or authorities, so joining or cooperating with it, to act on its behalf with respect to any or all powers. For purposes of this Code section the term "authorities" shall include an urban residential finance authority created pursuant to the provisions of Chapter 41 of Title 36.

(b) Any authorities joining or cooperating with one another may by resolution appoint from among the commissioners of such authorities an executive committee with full power to act on behalf of such authorities with respect to any or all of their powers, as prescribed by resolutions of such authorities. (Ga. L. 1937, p. 210, § 11; Ga. L. 1943, p. 146, § 8; Ga. L. 1988, p. 901, § 1.)

**JUDICIAL DECISIONS**

**Cited in** *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945).

**RESEARCH REFERENCES**

**ALR.** — Constitutionality, construction, and application of statutes or governmental projects for improvement of housing conditions (slum clearance), 172 ALR 966.

**8-3-14. Consolidated housing authorities for two or more municipalities.**

(a) As used in this Code section, the term "municipality" means any municipality in the state.

(b) If the governing body of each of two or more municipalities by resolution declares that there is a need for one housing authority for all of such municipalities to exercise in such municipalities the powers and other functions prescribed for a housing authority, a public body corporate and politic to be known as a consolidated housing authority, with such corporate name as it selects, shall thereupon exist for all of such municipalities and exercise its powers and other functions within its area of operation as defined in this article, including the power to undertake projects therein. Upon the creation of a consolidated housing authority, any housing authority created for any of such municipalities shall cease to exist except

for the purpose of winding up its affairs and executing a deed of its real property to the consolidated housing authority.

(c) The creation of a consolidated housing authority and the finding of need therefor shall be subject to the same provisions and limitations as are applicable to the creation of a regional housing authority; and all of the provisions of this article applicable to regional housing authorities and the commissioners thereof shall be applicable to consolidated housing authorities and the commissioners thereof; provided, however, that the area of operation of a consolidated housing authority shall include all of the territory within the boundaries of each municipality joining in the creation of such authority together with the territory within ten miles of the boundaries of each such municipality; and provided, further, that for all such purposes, the term "county" shall be construed as meaning "municipality," the term "governing body" in Code Section 8-3-106 shall be construed as meaning "mayor or other executive head of the municipality," and the terms "county housing authority" and "regional housing authority" shall be construed as meaning "housing authority of the city" and "consolidated housing authority," respectively.

(d) The governing body of a municipality for which a housing authority has not been created may adopt the resolution provided for in subsection (b) of this Code section if it first declares that there is a need for a housing authority to function in said municipality, which declaration shall be made in the same manner and subject to the same conditions as the declaration of the governing body of a city required by Code Sections 8-3-4 through 8-3-6 for the purpose of authorizing a housing authority created for a city to transact business and exercise its powers.

(e) Except as otherwise provided in this Code section, a consolidated housing authority and the commissioners thereof shall, within the area of operation of such consolidated housing authority, have the same functions, rights, powers, duties, privileges, immunities, and limitations as those provided for housing authorities created for cities, counties, or groups of counties and the commissioners of such housing authorities, in the same manner as though all the provisions of law applicable to housing authorities created for cities, counties, or groups of counties were applicable to consolidated housing authorities. (Ga. L. 1943, p. 146, § 6.)

### JUDICIAL DECISIONS

**Cited in** *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945).



**8-3-15. Extraterritorial operation of city housing authorities.**

(a) In addition to its other powers, a housing authority created for a city may exercise any or all of its powers within the territorial boundaries of any other municipality not included in the area of operation of such housing authority for the purpose of planning, undertaking, financing, constructing, and operating a housing project or projects within such municipality, provided that a resolution shall have been adopted by the governing body of such municipality in which the authority is to exercise its powers, and by any housing authority theretofore established by such municipality and authorized to exercise its powers therein declaring that there is a need for the housing authority seeking to exercise extraterritorial powers so to exercise its powers within such municipality.

(b) No governing body of a city or other municipality shall adopt such resolution unless it shall have found in substantially the following terms:

(1) That insanitary or unsafe inhabited dwelling accommodations exist in such municipality or that there is a shortage of safe or sanitary dwelling accommodations in such municipality available to persons of low income at rentals they can afford; and

(2) That these conditions can be best remedied through the exercise of the aforesaid city housing authority's powers within the territorial boundaries of such municipality.

(c) Any such findings made pursuant to subsection (b) of this Code section shall not have the effect of establishing a housing authority for any such municipality under this article nor of thereafter preventing such municipality from establishing a housing authority or joining in the creation of a consolidated housing authority.

(d) During the time that, pursuant to any findings made pursuant to subsection (b) of this Code section, a housing authority has outstanding, or is under contract to issue, any evidences of indebtedness for a project within the city or other municipality, no other housing authority may undertake a project within such municipality without the consent of said housing authority which has such outstanding indebtedness or obligation.

(e) A municipality shall have the same powers to furnish financial and other assistance to a housing authority exercising its powers within such municipality under this Code section as though the municipality were within the area of operation of such authority. (Ga. L. 1943, p. 146, § 6.)

**JUDICIAL DECISIONS**

**Cited in** Culbreth v. Southwest Ga. Regional Hous. Auth., 199 Ga. 183, 33 S.E.2d 684 (1945).

**8-3-16. Providing housing in rural areas.**

Any housing authority which has rural areas under its jurisdiction may undertake the provision of housing for families of low income in such rural areas and may comply with any conditions not inconsistent with the purposes of this article required by the federal government pursuant to federal law in any contract for financial assistance with the authority concerning such undertakings. (Ga. L. 1943, p. 146, § 6; Ga. L. 1945, p. 270, § 1; Ga. L. 1951, p. 219, § 2.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 28.

**8-3-17. Powers of authorities and board of regents as to dormitories; venue for actions regarding rights in projects and questions as to issuance of bonds; validation and confirmation of bonds.**

(a) The great increase in population in the State of Georgia which has taken place in recent years has created a serious shortage in dormitory housing accommodations at the various units of the University System of Georgia, causing overcrowded and congested conditions which are unsafe and undesirable and seriously impair the proper operation of such institutions. In addition, at some institutions now in operation or in the process of construction, there is a total lack of dormitory housing accommodations. This situation constitutes an emergency; and it is imperative that provisions be made to alleviate the overcrowded, congested, and unsafe accommodations and to supply accommodations where the same are now nonexistent by the construction of dormitory facilities or additional facilities for such institutions so as to make adequate, safe, and uncongested dormitory housing available for students enrolled at such institutions.

(b) Any housing authority now or hereafter established may undertake the construction, acquisition, remodeling, and improvement of, the addition to, and the maintenance and operation of projects to provide dormitory housing at any unit of the University System of Georgia located within its area of operation so as to provide housing for students enrolled at such institution, if the authority finds and determines that an acute shortage of housing for such persons exists or impends in its area of operation or any part thereof, and that necessary and adequate housing would not otherwise be provided when needed. In the ownership, development, or administration of dormitory housing projects, a housing authority shall have all the rights, powers, privileges, and immunities that it may now or hereafter have under any provision of law relating to the ownership, development, and administration of low rent housing and slum clearance projects or any other projects it is now or hereafter authorized to

undertake, in the same manner as though all laws applicable thereto were applicable to dormitory housing projects. Such rights shall include specifically, but without limitation, the right to issue bonds from time to time, in the authority's discretion, in order to provide funds to pay the cost, in whole or in part, of constructing, acquiring, remodeling, improving, and adding to any dormitory housing project; and the right to issue refunding bonds for the purpose of refunding or retiring bonds previously issued by the authority for any such project. Such bonds may be of such type as the housing authority may determine, including bonds on which the principal and interest are payable:

(1) Exclusively from the income and revenues of the dormitory project financed in whole or in part from the proceeds of such bonds, or with such proceeds together with a grant from the federal government or the State of Georgia, or from any other source in aid of such project;

(2) Exclusively from the income and revenues of certain designated projects of the authority, including projects other than dormitory housing projects of the authority even though the same were not financed in whole or in part with the proceeds of the bonds; or

(3) From its revenues generally that are not otherwise pledged or obligated.

Any of such bonds may be additionally secured by a pledge of any revenues of any project or projects or other properties of the authority. A housing authority may, notwithstanding the provisions of any other law, make and agree to make with respect to any dormitory housing project owned and administered by it under this article such payments as may be agreed upon for facilities and services furnished to such dormitory housing project by the city, county, or other political subdivision of the state in which such dormitory housing project is located, or by the unit of the University System of Georgia which such dormitory housing project serves. In the operation of such dormitory housing projects the housing authority owning and administering the same shall not be subject to the limitations provided in Code Section 8-3-12, in the second sentence of Code Section 8-3-11, and in Code Section 8-3-74.

(c) A housing authority may exercise any or all of its powers to aid or cooperate with the state and federal governments in making dormitory housing available at units of the University System of Georgia, may act as agent for the state or federal governments in developing and administering dormitory housing projects undertaken by either of them, and may lease such dormitory housing projects from either of them. Without limiting the generality of the foregoing, authority is also specifically granted to the Board of Regents of the University System of Georgia, for and on behalf of the units and institutions under its control, and any housing authority to enter into leases of any such project or projects for a term of not exceeding



50 years; and the Board of Regents of the University System of Georgia, for and on behalf of any unit or institution or combination of units or institutions, may obligate itself to pay an agreed sum for the use of such property so leased and also to obligate itself, as a part of the lease contract, to pay the cost of maintaining, repairing, and operating the property so leased from the authority, and may arrange with public bodies and private agencies for such services and facilities as may be necessary or desirable for such dormitory housing projects.

(d) Any other law to the contrary notwithstanding, if the Board of Regents of the University System of Georgia and a housing authority determine it expedient to construct any dormitory housing project on any lands, title to which is held by any unit or institution under the control of the board of regents, the board is authorized to execute a lease upon such lands, whether improved or unimproved, to the authority for such parcel or parcels as shall be needed for a period of not to exceed 50 years at such annual rental, which may be purely nominal, as the board and the housing authority may agree upon, provided that, at the expiration of such term, title to said land and all improvements thereon shall revert to and vest in such unit or institution under the control of said board. The board of regents shall also have the right, any other law to the contrary notwithstanding, should it determine with the housing authority that it is necessary and desirable to do so, to convey, by a deed executed by the chairman of the board of regents upon resolution of said board, for such consideration as may be agreed upon (which consideration may be nominal), to a housing authority for a dormitory housing project title to any land, whether improved or unimproved, owned by any unit or institution under its control which is to be served by such dormitory housing project, including land to which the regents of the University System of Georgia hold title, provided that title to such land and all improvements thereon shall revert or be reconveyed by the housing authority to such unit or institution when all bonds, and the interest thereon, which were issued by the housing authority to finance such construction, or bonds issued to refinance such obligations, or to finance in whole or in part any additions or improvements thereto, have been paid in full.

(e) Any action to protect or enforce any right in connection with the construction, acquisition, ownership, maintenance, alteration, expansion, improvement, or operation of dormitory housing projects, or involving any question in connection with the issuance of bonds to finance any such undertaking, or with the rights of the holders thereof or the security therefor, shall be brought in the superior court of the county in which the dormitory housing project is located. Any action pertaining to the validation of any bonds issued to finance in whole or in part the cost of any such dormitory housing project or any refunding bonds shall likewise be brought in said court, which shall have exclusive, original jurisdiction of such actions.

(f) Bonds of the authority issued to finance in whole or in part the cost of any dormitory housing project and any refunding bonds shall be confirmed and validated in accordance with the procedure set forth in Article 3 of Chapter 82 of Title 36, the "Revenue Bond Law," and the judgment of validation shall have the same effect as is provided in that chapter. (Ga. L. 1959, p. 65, § 3; Ga. L. 1982, p. 3, § 8.)

**Cross references.** — Authority of board of regents to sell, lease, etc., property that can no longer be advantageously used in the university system, § 20-3-60 et seq. Assistance by Private Colleges and Universities Facilities

Authority in construction, financing, and refinancing of dormitory, classroom, etc., facilities at private colleges and universities, § 20-3-200 et seq.

## PART 2

### POWERS OF HOUSING AUTHORITIES GENERALLY

#### **8-3-30. General powers; applicability of laws as to acquisition, operation, or disposition of property by other public bodies.**

(a) An authority shall constitute a public body corporate and politic exercising public and essential governmental functions and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others granted by this article:

(1) To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules, and regulations, not inconsistent with this article, to carry into effect the powers and purposes of the authority;

(2) Within its area of operation, to prepare, carry out, acquire, lease, and operate housing projects; to provide for the construction, reconstruction, improvement, alteration, or repair of any housing project or any part thereof;

(3) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof; and, notwithstanding anything to the contrary contained in this article or in any other provision of law, to include in any contract let in connection with a project stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor and comply with any conditions which the federal government may have attached to its financial aid of the project;

(4) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project and,

subject to the limitations contained in this article, to establish and revise the rents or charges therefor; to own, hold, and improve real or personal property; to purchase, lease, obtain options upon, or acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge, or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure insurance or guarantees from the federal government of the payment of any debts or parts thereof, whether or not incurred by said authority, secured by mortgages on any property included in any of its housing projects;

(5) Subject to any agreement with bondholders, to invest moneys of the authority not required for immediate use to carry out the purposes of this part, including the proceeds from the sale of any bonds and any moneys held in reserve funds, in obligations which shall be limited to the following:

(A) Bonds or other obligations of the state or bonds or other obligations the principal and interest of which are guaranteed by the state;

(B) Bonds or other obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government;

(C) Obligations of agencies of the United States government issued by the Federal Land Bank, the Federal Home Loan Bank, Federal Intermediate Credit Bank, and Bank for Cooperatives;

(D) Bonds or other obligations issued by any public housing agency or municipality in the United States, which bonds or obligations are fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipality in the United States and fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(E) Certificates of deposit of national or state banks located within the state which have deposits insured by the Federal Deposit Insurance Corporation or the Georgia Deposit Insurance Corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds; provided, however, that the portion of such certificates of deposit in excess of the amount insured



by the Federal Deposit Insurance Corporation or the Georgia Deposit Insurance Corporation, if any such excess exists, shall be secured by deposit with the Federal Reserve Bank of Atlanta, Georgia, the Federal Home Loan Bank of Atlanta, Georgia, or with any national or state bank located within the state, or one or more of the following securities in an aggregate principal amount equal at least to the amount of such excess:

(i) Direct and general obligations of the state or of any county or municipality in the state;

(ii) Obligations of the United States or subsidiary corporations included in subparagraph (B) of this paragraph;

(iii) Obligations of agencies of the United States government included in subparagraph (C) of this paragraph; or

(iv) Bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in subparagraph (D) of this paragraph;

(F) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other similar banking arrangements with a bank or trust company having capital and surplus aggregating at least \$50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least \$50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Company Act of 1956, provided that each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys; and

(G) Any and all other obligations of investment grade quality having a credit rating from a nationally recognized rating service of at least one of the three highest rating categories available and having a nationally recognized market, including, but not limited to, collateralized mortgage obligations, owner trusts offering collateralized mortgage obligations, guaranteed investment contracts offered by any firm, agency, business, governmental unit, bank, insurance company, corporation chartered by the United States Congress, or other entity, real estate mortgage investment conduits, mortgage obligations, mortgage pools, and pass-through securities;

(6) Within its area of operation, to investigate into living, dwelling, and housing conditions and into the means and methods of improving

such conditions; to determine where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning, and reconstructing slum areas, and the problem of providing dwelling accommodations for persons of low income and to cooperate with the city, the county, or the state or any political subdivision thereof in action taken in connection with such problem; and to engage in research, studies, and experimentation on the subject of housing;

(7) Acting through one or more commissioners or other person or persons designated by the authority, to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers, and issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority, or who are excused from attendance; to make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or like conditions or of demolishing unsafe or insanitary structures within its area of operation, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare;

(8) To exercise all or any part or combination of powers granted by this Code section;

(9) To invest moneys held in debt service reserve funds or sinking funds not required for immediate use or disbursement in obligations of the types specified in paragraph (5) of this subsection, provided that, for the purpose of this paragraph, the amounts and maturities of such obligations shall be based upon and correlated to the debt service (principal installments and interest payments) schedule for which moneys are to be supplied;

(10) To incorporate one or more nonprofit corporations as subsidiary corporations of the authority for the purpose of carrying out any of the powers of the authority and accomplishing any of the purposes of the authority. Any such subsidiary corporation shall be a nonprofit corporation and a public body corporate and politic exercising public and essential governmental functions. Any subsidiary corporations created pursuant to this power shall be created pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and the Secretary of State shall be authorized to accept such filings. Some or all of the members of the board of directors of the authority shall constitute the members of and shall serve as directors of any subsidiary corporation and such service shall not constitute a conflict of interest. Upon dissolution of any

subsidiary corporation of the authority, any assets shall revert to the authority or to any successor to the authority or, failing such succession, to the city or the county, as applicable. The authority shall not be liable for the debts or obligations or bonds of any subsidiary corporation or for the actions or omissions to act of any subsidiary corporation unless the authority expressly so consents; and

(11) To incorporate one or more corporations as subsidiary corporations of the authority for the purpose of carrying out any of the powers of the authority and accomplishing any of the purposes of the authority. Any subsidiary corporations created pursuant to this paragraph shall be created pursuant to Chapter 2 of Title 14, the "Georgia Business Corporation Code," and the Secretary of State shall be authorized to accept such filings. Some or all of the members of the board of commissioners of the authority may serve as directors of any subsidiary corporation and such service shall not constitute a conflict of interest; provided, however, that no member of the board of commissioners of the authority shall be eligible to serve as a director of any subsidiary corporation if that member has any financial interest in the subsidiary corporation. Upon dissolution of any subsidiary corporation of the authority, any assets shall be distributed to the authority as the sole shareholder or to any successor to the authority or, failing such succession, to the city or county, as applicable. The authority shall not be liable for the debts, obligations, or bonds of any subsidiary corporation or for the actions or omissions to act of any subsidiary corporation unless the authority expressly so consents.

(b) No provisions of law with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

(c) No loan made by an authority to an entity with which the authority has entered into a private enterprise agreement shall be deemed usurious or otherwise in violation of Code Section 7-4-17 so long as such loan complies with Code Section 7-4-18. (Ga. L. 1937, p. 210, § 8; Ga. L. 1939, p. 126, § 2; Ga. L. 1951, p. 127, § 2; Ga. L. 1959, p. 141, § 2; Ga. L. 1962, p. 734, § 2; Ga. L. 1987, p. 283, § 3; Ga. L. 1993, p. 1067, §§ 1, 2; Ga. L. 1996, p. 1417, § 6; Ga. L. 1998, p. 857, § 1; Ga. L. 2000, p. 1428, §§ 1, 2; Ga. L. 2001, p. 4, § 8.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1993, a period was substituted for a semicolon at the end of paragraph (a)(9).

## JUDICIAL DECISIONS

**Construction.** — In proceedings under statute authority whereby a person may be deprived of one's property, the statute must be strictly construed. *Cobb v. Housing Auth.*, 210 Ga. 676, 82 S.E.2d 848 (1954).  
The taking or injuring of private property



for the public benefit is the exercise of a high power, and all the conditions and limitations provided by law, under which it may be done, should be closely followed. *Cobb v. Housing Auth.*, 210 Ga. 676, 82 S.E.2d 848 (1954).

**“Acquire”.** — To “acquire” is treated as something entirely different from the construction, reconstruction, improvement, alteration, or repair of an existing facility; and there is no reason to hold that a different meaning is attributable when the word “acquisition” is used in Ga. L. 1962, p. 734, § 2 (see O.C.G.A. 8-3-30(b)). *Housing Auth. v. Marbut Co.*, 127 Ga. App. 379, 193 S.E.2d 574 (1972).

**The right of eminent domain** rests largely in the discretion of the housing authority as to what and how much land is to be taken. The owner of land sought to be condemned

cannot prevent such taking merely because there is other property which might have been more suitable for the purpose. *Housing Auth. v. Hall*, 217 Ga. 856, 126 S.E.2d 223 (1962).

**Liability for employee’s defamatory remarks.** — In order for an authority to be liable for the defamatory remarks of its employee, evidence must be offered that the authority, as a public body corporate and politic as contemplated by the terms of O.C.G.A. § 8-3-30, had through its board of commissioners either authorized, approved, or ratified the alleged slanderous statements. *Anderson v. Housing Auth.*, 171 Ga. App. 841, 321 S.E.2d 378 (1984).

**Cited in** *Housing Auth. v. Ayers*, 211 Ga. 728, 88 S.E.2d 368 (1955); *Brown v. Housing Auth.*, 240 Ga. 647, 242 S.E.2d 143 (1978).

## OPINIONS OF THE ATTORNEY GENERAL

**Preparation, operation, etc., of projects, cooperation.** — Under Ga. L. 1962, p. 734, § 2 (see O.C.G.A. § 8-3-30), authorities may prepare, carry out, lease, and operate projects; and under that Code section, they can cooperate with “the city, the county, the state, or any political subdivision”; none of these powers include management contracts with private organizations, and powers are strictly construed. 1972 Op. Att’y Gen. No. U72-50.

**Purchase and pledge of obligations by state bank.** — A state bank may purchase obligations of a public housing agency and pledge them as security for the repayment of a deposit of funds made with the bank by the housing agency provided the purchase of such obligations does not exceed 10 percent of the capital and unimpaired surplus of the bank. 1957 Op. Att’y Gen. p. 7.

**Funds as public funds.** — The funds of a local housing authority held exclusively for a public purpose are public funds within the meaning of former Code 1933, §§ 89-812 abd 89-813 (see O.C.G.A. §§ 45-8-13 and 45-8-15. 1957 Op. Att’y Gen. p. 7.

**Employees of housing authority exempt from state loyalty oath.** — Although a city housing authority is an instrumentality of the state, it is not an agency, board, or department of the state, and, therefore, employees of the housing authority of a city are not required to sign the loyalty oath. 1950-51 Op. Att’y Gen. p. 98.

**The geographic jurisdiction of a city housing authority** established under the Housing Authority Law is governed primarily by the definition of “area of operation” in § 8-3-3(1). 1997 Op. Att’y Gen. No. U97-22.

## RESEARCH REFERENCES

**ALR.** — Constitutionality, construction, and application of statutes or governmental projects for improvement of housing conditions (slum clearance), 172 ALR 966.

Subility and liability for torts of public housing authority, 61 ALR2d 1246.

Validity and construction of statute or ordinance providing for repair or destruc-

tion of residential building by public authorities at owner’s expense, 43 ALR3d 916.

What entities or projects are “public” for purposes of state statutes requiring payment of prevailing wages on public works projects, 5 ALR5th 470.

What are “prevailing wages,” or the like, for purposes of state statute requiring pay-

ment of prevailing wages on public works projects, 7 ALR5th 400.

Employers subject to state statutes requir-

ing payment of prevailing wages on public works projects, 7 ALR5th 444.

### 8-3-31. Eminent domain.

An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes under this article after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided in Title 22; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired, except that no real property belonging to the city, the county, the state, or any political subdivision thereof may be acquired without the consent of such city, county, state, or other political subdivision. (Ga. L. 1937, p. 210, § 12.)

## JUDICIAL DECISIONS

**Nature and exercise of power.** — The right to take private property by the exercise of the power of eminent domain is an element of sovereignty, and will be upheld only when every prerequisite to its exercise has been fully met. *Scheuer v. Housing Auth.*, 214 Ga. 842, 108 S.E.2d 264 (1959).

**Conferring power within legislature's power.** — The conferring of the right of eminent domain upon housing authorities by Ga. L. 1937, p. 210 (see O.C.G.A. § 8-3-30 et seq.) was within the power of the General Assembly. *Williamson v. Housing Auth.*, 186 Ga. 673, 199 S.E. 43 (1938).

**No judicial interference absent bad faith or abuse of power.** — The selection of what and how much property will be taken for a needed public use by a condemning authority will not be interfered with or controlled by the courts unless such selection is made in bad faith or beyond the power conferred by law. *Varnadoe v. Housing Auth.*, 221 Ga. 467, 145 S.E.2d 493 (1965).

**Cited in** *Housing Auth. v. Savannah Iron & Wire Works, Inc.*, 90 Ga. App. 150, 82 S.E.2d 244 (1954); *West v. Housing Auth.*, 211 Ga. 133, 84 S.E.2d 30 (1954).

## RESEARCH REFERENCES

**ALR.** — Eminent domain: possibility of overcoming specific obstacles to contem-

plated use as element in determining existence of necessary public use, 22 ALR4th 840.

### 8-3-32. Borrowing money and accepting grants and other financial assistance from federal government; taking over, leasing, or managing projects constructed or owned by federal government; purpose and intent of article.

An authority is empowered to borrow money or accept grants or other financial assistance from the federal government for, or in aid of, any housing project within its area of operation; to take over or lease or manage any housing project or undertaking constructed or owned by the federal

government; and, to these ends, to comply with such conditions and enter into such mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable. It is the purpose and intent of this article to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance, or operation of any housing project by such authority. (Ga. L. 1937, p. 210, § 20; Ga. L. 1939, p. 126, § 2; Ga. L. 1951, p. 127, § 2; Ga. L. 1959, p. 141, § 2; Ga. L. 1962, p. 734, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

<p><b>The geographic jurisdiction of a city housing authority</b> established under the Housing Authority Law is governed primarily by the</p>	<p>definition of “area of operation” in O.C.G.A. § 8-3-3(1). 1997 Op. Att’y Gen. No. U97-22.</p>
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RESEARCH REFERENCES

<p><b>Am. Jur. 2d.</b> — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, §§ 7, 8.</p>	<p><b>ALR.</b> — Home Owners’ Loan Act, 121 ALR 117; 125 ALR 809.</p>
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**8-3-33. Contracts and agreements with federal government to obtain federal contributions to housing projects.**

- (a) In any contract or amendatory or superseding contract for a loan and annual contributions heretofore or hereafter entered into between a housing authority and the federal government with respect to any housing project undertaken by said housing authority, the authority is authorized to make such covenants (including covenants with holders of bonds issued by the authority for purposes of the project involved) and to confer upon the federal government such rights and remedies as the authority deems necessary to assure the fulfillment of the purposes for which the project was undertaken.
- (b) In any contract with the federal government for annual contributions to an authority, the authority may obligate itself to convey to the federal government possession of or title to the project to which such contract relates, upon the occurrence of a substantial default, as defined in such contract, with respect to the covenants or conditions to which the authority is subject. Such obligation shall be specifically enforceable and shall not constitute a mortgage, any other laws notwithstanding.
- (c) Any contract with the federal government for annual contributions to an authority may further provide that in case of a conveyance pursuant to subsection (b) of this Code section, the federal government may complete, operate, manage, lease, convey, or otherwise deal with the project in accordance with the terms of such contract.
- (d) Any contract entered into pursuant to subsections (b) and (c) of this Code section shall require that, as soon as practicable after the federal



government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the authority the project as then constituted. (Ga. L. 1943, p. 146, § 6; Ga. L. 1951, p. 127, § 2; Ga. L. 1951, p. 219, § 3; Ga. L. 1959, p. 141, § 2; Ga. L. 1962, p. 734, § 2.)

### JUDICIAL DECISIONS

**Cited in** *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945).

#### **8-3-34. Housing studies and analyses.**

(a) Any housing authority may, within its area of operation, undertake studies and analyses of housing needs and of the measures required to meet such needs, including the gathering of data with respect to population and family groups, and the distribution of such groups according to income, and the gathering of data with respect to the amount and quality of available housing, and its distribution according to rental and sales prices, employment, wages, and other factors affecting local housing needs and the measures required to meet such needs.

(b) An authority may make the results of such studies and analyses available to the public and to the building, housing, and supply industries.

(c) An authority may also engage in research and disseminate information on the subject of housing generally. (Ga. L. 1945, p. 270, § 2.)

#### **8-3-35. Legislative findings; additional powers of authority; effect of financing with bond proceeds; issuance, sale, confirmation, and validation of bonds; venue of actions.**

(a) It is found and declared that from time to time there has existed and at the present time there exists an inadequate supply of funds at interest rates sufficiently low to enable the financing of safe and sanitary single and multifamily dwelling units for citizens of the state with low and moderate income; that the inability to finance such single and multifamily dwelling units results in an inability of builders to construct such housing, causing unemployment or underemployment in the housing construction and related businesses and causing a lack of safe and sanitary housing to be available to persons of low and moderate income; that such unemployment or underemployment in the housing construction and related businesses and an inadequate supply of safe and sanitary housing for persons of low and moderate income wastes human resources, increases the public assistance burden of the state, impairs the security of family life, impedes the economic and physical development of the state, adversely affects the

welfare and prosperity of all of the people of the state, and accordingly creates and fosters conditions adverse to the general health and welfare of the citizens of the state; and that the making available in the manner provided in this Code section of a more adequate supply of funds at interest rates sufficiently low to enable the financing of safe and sanitary single and multifamily dwelling units for citizens of low and moderate income will result in the alleviation or reduction of the adverse consequences which have resulted and may result from continued unemployment and underemployment in the housing construction and related businesses and the inadequate supply of such housing for persons of low and moderate income.

(b) In addition to the powers otherwise granted in this article, any authority shall have the following powers:

(1) To purchase mortgage loans or other forms of collateral and participations therein from mortgage lenders and other holders of such collateral and to make commitments therefor;

(2) To contract with mortgage lenders for the origination of, or the servicing of, mortgage loans to be made by such mortgage lenders to finance eligible housing units within the authority's area of operation and the servicing of the mortgages securing such mortgage loans;

(3) To make loans to mortgage lenders, provided that:

(A) The proceeds of such loans shall be required to be used by such mortgage lenders for the making of mortgage loans to finance eligible housing units within the authority's area of operation; and

(B) If required by the authority, the mortgages in connection with the mortgage loans so made, together with any additional security required by the authority, shall be mortgaged, pledged, assigned, or otherwise provided as security for such loans to mortgage lenders;

(4) To issue bonds from time to time, in its discretion, to provide funds to purchase mortgage loans or other forms of collateral or participation interests therein from mortgage lenders and to make loans to mortgage lenders and to make direct loans for eligible housing units as authorized in this Code section and to issue refunding bonds for the purpose of refunding or retiring bonds previously issued by it for any such purpose, in accordance with the provisions of this article, which may include, but are not limited to, bonds on which the principal and the interest are payable:

(A) Exclusively from the income and revenues of the authority from one or more specified mortgage loans or other forms of collateral or participation interests therein from one or more specific loans to mortgage lenders, regardless of whether such mortgage loans or other forms of collateral or participation interests therein were purchased or

such loans to mortgage lenders were made from the proceeds of such bonds; or

(B) From revenues of the authority generally that are not otherwise pledged or obligated;

(5) To exercise any and all rights accorded to the owner and holder of a mortgage under and in accordance with the terms of said instrument and the applicable laws of the state with respect to the mortgaged property, directly or through mortgage lenders or others acting on behalf of the authority or on behalf of the holders of its bonds, including, but without limitation, the power to foreclose, to forbear enforcement of any remedy on such terms as the authority shall deem appropriate, to sell the equity of redemption, to purchase the equity of redemption, and otherwise to sell and dispose of the mortgaged property, all as shall seem in the best interest of the authority and the holders of its bonds; and

(6) To mortgage, pledge, assign, or grant security interests in any or all of its mortgage loans or other collateral or participation interests therein, its mortgages, and any interest of the authority created thereby in the underlying real and personal properties covered by such mortgages as security for the payment of the principal of, and interest on, any bonds issued by the authority, or as security for any agreements made in connection therewith, whether then owned or thereafter acquired, and to pledge the revenues from which bonds are payable as security for the payment of the principal of and interest on said bonds and any agreements made in connection therewith.

(c) No eligible housing unit shall become subject to the provisions of Code Section 8-3-11 or Code Section 8-3-12 or entitled to the benefits of Code Section 8-3-8 solely by reason of having been financed, directly or indirectly, with proceeds of bonds issued by an authority for the purposes described in this Code section.

(d) Any bonds issued by an authority as permitted under the terms of this article which are issued for the purposes described in this Code section shall be issued in accordance with the provisions of this article, except that such bonds may be sold at any price which shall be approved by the authority and may be sold at public or private sale without any public advertisement.

(e) Bonds of an authority which are issued for the purposes described in this Code section shall be confirmed and validated in accordance with the procedures set forth in Article 3 of Chapter 82 of Title 36 known as the "Revenue Bond Law," and the judgment of validation shall have the same effect as is provided in said "Revenue Bond Law."

(f) Any action pertaining to issuance of bonds of an authority issued for the purposes described in this Code section, the rights of the holders



thereof or the security therefor, and any action pertaining to the validation of any such bonds, shall be brought in the superior court of the county in which the eligible housing units to be financed with proceeds of such bonds are located, or if such eligible housing units shall be located in more than one county, in the superior court of any county where any of such eligible housing units are situated. (Ga. L. 1982, p. 2228, § 2; Code 1981, § 8-3-35, enacted by Ga. L. 1982, p. 2228, § 5; Ga. L. 1983, p. 3, § 6; Ga. L. 1989, p. 14, § 8.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1997, quotation marks were added at the beginning and end of “Revenue Bond Law” at the end of subsection (e).

### **8-3-36. Prohibition of nonresidents suspected of criminal acts.**

Any housing authority created pursuant to this article, acting through its director or his or her designee, is authorized to prohibit, without breaching the peace, any person who is reasonably suspected of committing a criminal act on the premises of a housing project and who is not a resident of said project from entering, loitering, or remaining upon the common areas of such project. (Code 1981, § 8-3-36, enacted by Ga. L. 1998, p. 857, § 2.)

## **RESEARCH REFERENCES**

**ALR.** — Validity, construction, and application of loitering statutes and ordinances, 72 ALR5th 1.

## **PART 3**

### **HOUSING AUTHORITY COMMISSIONERS**

### **8-3-50. Appointment, qualifications, and tenure of commissioners; reimbursement for expenses.**

(a)(1) When the governing body of a city adopts a resolution as provided in Code Section 8-3-5, it shall promptly notify the mayor of such adoption. Upon receiving such notice, the mayor shall appoint five persons as commissioners of the authority created for such city. In the event the mayor fails or refuses to submit appointments within 30 days after notice from the governing body of approval of a resolution of necessity or termination of existing appointments, the governing body may appoint the commissioners of the authority created for such city.

(2) In any city other than a city described in subparagraphs (A) and (B) of paragraph (3) of this subsection in which the governing body thereof has adopted a resolution as provided in Code Section 8-3-5 and the authority has passed a resolution so requesting, the mayor shall appoint, in addition to the other commissioners authorized in paragraph

(1) of this subsection, one or two additional commissioners of whom at least one is directly assisted by the public housing authority in such city and who shall be known as a resident commissioner. Each resident commissioner shall be appointed for initial and subsequent terms of office of one year and shall have full voting rights. Each authority shall determine how many commissioners shall constitute a quorum of such authority. In the event any person serving as a resident commissioner ceases to be directly assisted by the public housing authority within such city, then such person shall cease to be a resident commissioner and a vacancy shall result. Vacancies in the office of resident commissioner shall be filled for the unexpired term by appointment of the mayor.

(3)(A) In any city with a population of 350,000 or more according to the United States decennial census of 1970 or any future such census in which the governing body has adopted a resolution as provided in Code Section 8-3-5, the mayor shall appoint, in addition to the other commissioners authorized under paragraph (1) of this subsection, two commissioners to be known as resident commissioners who shall be residents of a housing project in such city. These resident commissioners shall be appointed for a term of office of one year. The two resident commissioners shall be voting members and four commissioners shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes. In the event any person serving as a resident commissioner ceases to be a resident of a housing project in such city, then such person shall cease to be a resident commissioner and a vacancy shall result. Vacancies in the office of resident commissioner shall be filled for the unexpired term by appointment by the mayor of said city.

(B) In any city of this state having a population of not less than 95,000 nor more than 130,000 according to the United States decennial census of 1990 or any future such census in which the governing body has adopted a resolution as provided in Code Section 8-3-5, the mayor shall appoint, in addition to the commissioners authorized in paragraphs (1) and (2) of this subsection, an additional commissioner who shall be a recipient of direct assistance from the public housing authority within the city. Such additional commissioner shall be appointed for a term of office of five years and until the appointment and qualification of a successor. Successors shall also be appointed for terms of five years.

(4) Reserved.

(b)(1) When the governing body of a county adopts a resolution as provided in Code Section 8-3-5, said body shall appoint five persons as commissioners of the authority created for said county.

(2) In any county other than a county described in paragraph (3) of this subsection in which the governing body thereof has adopted a

resolution as provided in Code Section 8-3-5 and the authority has passed a resolution so requesting, the governing body shall appoint, in addition to the other commissioners authorized in paragraph (1) of this subsection, one or two additional commissioners of whom at least one is directly assisted by the public housing authority in such county and who shall be known as a resident commissioner. Each resident commissioner shall be appointed for initial and subsequent terms of office of one year and shall have full voting rights. Each authority shall determine how many commissioners shall constitute a quorum of such authority. In the event any person serving as a resident commissioner ceases to be a recipient of direct assistance from the public housing authority within such county, then such person shall cease to be a resident commissioner and a vacancy shall result. Vacancies in the office of resident commissioner shall be filled for the unexpired term by appointment of the governing body of such county.

(3) In any county with a population of 800,000 or more according to the United States decennial census of 2000 or any future such census in which the governing body has adopted a resolution as provided in Code Section 8-3-5, the governing body shall, in addition to the other commissioners authorized under paragraph (1) of this subsection:

(A) Appoint two commissioners to be known as “resident commissioners” who shall be residents of a housing project located within the unincorporated areas of such county. The tenants of each housing project located within the unincorporated areas of the county shall, upon request of the governing body of the county, be entitled to nominate one resident of such housing project for the appointment as resident commissioner, and the governing body shall appoint two of such nominees as resident commissioners. Such resident commissioners shall be appointed for terms of office of one year and shall be voting members. In the event any person serving as resident commissioner ceases to be a resident of a housing project located within the unincorporated area of such county, then such person shall cease to be a resident commissioner and a vacancy shall result. Vacancies in the office of resident commissioner shall be filled for the unexpired term by appointment by the governing body of such county; and

(B) Appoint an additional two members who shall be subject to the provisions of this Code section in the same manner as the five commissioners otherwise provided for in paragraph (1) of this subsection. Each commissioner provided for in this subparagraph shall be appointed for a term of office of five years and until the appointment and qualification of his or her successor, except that the initial appointment of one of the positions created by this subparagraph shall be for a term of office of four years and until the appointment and qualification of his or her successor.



(c) Except as provided otherwise in this Code section, the commissioners who are first appointed shall be designated to serve for terms of office of one, two, three, four, and five years, respectively, from the date of their appointment; but thereafter commissioners shall be appointed for a term of office of five years, except that all vacancies shall be filled for the unexpired term.

(d) No commissioner of an authority may be an officer or employee of the city or county for which the authority is created.

(e) A commissioner shall hold office until his or her successor has been appointed and has qualified.

(f) A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

(g) A commissioner shall receive no compensation for his or her services; but he or she shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his or her duties. (Ga. L. 1937, p. 210, § 5; Ga. L. 1939, p. 112, § 3; Ga. L. 1939, p. 126, § 1; Ga. L. 1943, p. 146, § 7; Ga. L. 1951, p. 127, § 1; Ga. L. 1951, p. 612, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1; Ga. L. 1971, p. 414, § 1; Ga. L. 1972, p. 3908, § 1; Ga. L. 1982, p. 507, §§ 1, 2; Ga. L. 1982, p. 1087, §§ 1, 2; Ga. L. 1982, p. 2107, § 2; Ga. L. 1983, p. 3, § 6; Ga. L. 1989, p. 1241, § 1; Ga. L. 1991, p. 390, § 1; Ga. L. 1992, p. 6, § 8; Ga. L. 1992, p. 2059, § 1; Ga. L. 1992, p. 2408, § 1; Ga. L. 1994, p. 237, § 2; Ga. L. 1999, p. 737, § 1; Ga. L. 2002, p. 1473, § 1; Ga. L. 2004, p. 631, § 8.)

**The 2002 amendment**, effective July 1, 2002, in paragraph (b)(3), substituted “800,000” for “550,000” near the beginning and substituted “census of 2000” for “census of 1990” near the middle.

**The 2004 amendment**, effective May 13, 2004, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (a)(2).

**Code Commission notes.** — Pursuant to

Code Section 28-9-5, in 1999, “paragraph (3)” was substituted for “subparagraph (b)(3)” in paragraph (b)(2).

**Editor’s notes.** — The provisions of paragraphs (2) and (3) of subsection (b) as added by the 1983 amendment were originally enacted in substantially the same form by Ga. L. 1982, p. 504, § 1, effective May 1, 1982. However, that 1982 Act did not amend the Code.

## JUDICIAL DECISIONS

**Cited in** *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945); *Varnadoe v. Housing Auth.*, 221

Ga. 467, 145 S.E.2d 493 (1965); *Paige v. Gray*, 437 F. Supp. 137 (M.D. Ga. 1977); *Doe v. Sears*, 245 Ga. 83, 263 S.E.2d 119 (1980).

## OPINIONS OF THE ATTORNEY GENERAL

**Service by mayor on county or city board.** — There is nothing in Ga. L. 1951, p. 612

(see O.C.G.A. § 8-3-50) prohibiting the mayor of a city from remaining as a member

or chairman of the board of commissioners of the housing authority of a county; the mayor would be ineligible, however, to serve

as a member or chairman of a city housing authority. 1958-59 Op. Att'y Gen. p. 40.

**8-3-51. Commissioners authority; quorum; voting by commissioners; chairman; vice-chairman; employment of personnel; obtaining legal services; delegation of powers or duties.**

(a) The powers of each authority shall be vested in the commissioners thereof in office from time to time. Three commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority shall require a larger number.

(b) The mayor shall designate which of the commissioners appointed shall be the first chairman; but, when the office of the chairman of the authority thereafter becomes vacant, the authority shall select a chairman from among its commissioners.

(c) An authority shall select from among its commissioners a vice-chairman; and it may employ a secretary (who shall be executive director), technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require; and it shall determine their qualifications, duties, and compensations.

(d) For such legal services as it may require, an authority may call upon the chief law officer of the city or the county or may employ its own counsel and legal staff.

(e) An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (Ga. L. 1937, p. 210, § 5; Ga. L. 1939, p. 112, § 3; Ga. L. 1939, p. 126, § 1; Ga. L. 1943, p. 146, § 7; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1; Ga. L. 1989, p. 14, § 8.)

### JUDICIAL DECISIONS

**Cited** in *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945).

### OPINIONS OF THE ATTORNEY GENERAL

**Attorney for housing authority.** — There is no prohibition against members of the General Assembly, city attorneys, or county attor-

neys being employed as attorneys for a housing authority. 1960-61 Op. Att'y Gen. p. 9.

**8-3-52. Disclosure and abstention requirements for interested commissioners and employees.**

(a) No commissioner or employee of the authority shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract in connection with any project. Where the acquisition is not voluntary, such commissioner or employee shall immediately disclose such interest in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Upon such disclosure, such commissioner or employee shall not participate in any action by the authority involving such project, property, or contract, respectively.

(b) If any commissioner or employee of the authority previously owned or controlled an interest, direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract in connection with any project, he shall immediately disclose such interest in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Upon such disclosure, such commissioner or employee shall not participate in any action by the authority involving such project, property, or contract, respectively.

(c) A commissioner shall not participate in any action concerning the employment to a remunerative position of the person who appointed said commissioner to office.

(d) In the selection of a depository for funds of the authority, any commissioner who has a financial interest in the depository under consideration shall disclose his interest and abstain from taking any part in the consideration of or voting on the selection of the depository.

(e) Any violation of this Code section shall constitute misconduct in office.

(f) This Code section shall not be applicable to the acquisition of any interest in notes or bonds of the authority issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project, or to agreements by such institutions to act as trustee under any trust indenture. (Ga. L. 1937, p. 210, § 6; Ga. L. 1951, p. 219, § 4; Ga. L. 1982, p. 906, §§ 2, 3.)

**Cross references.** — Conflicts of interest involving state officers and employees, § 45-10-20 et seq.

**8-3-53. Removal of commissioners.**

For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority may be removed by the mayor or, in the case of an



authority for a county, by the governing body of said county, provided that a commissioner shall be removed only after he shall have been given a copy of the charges at least ten days prior to the hearing thereon and shall have had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk. (Ga. L. 1937, p. 210, § 7; Ga. L. 1943, p. 146, § 7.)

### JUDICIAL DECISIONS

**Cited** in *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945).

### PART 4

### OBLIGATIONS ON BONDS AND LEASES

#### 8-3-70. Bonds — Power of authorities to issue bonds; types of bonds; security for bonds.

An authority shall have power to issue bonds from time to time, in its discretion, for any of its corporate purposes. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. An authority may issue such types of bonds as it may determine, including bonds on which the principal and interest are payable:

(1) Exclusively from the income and revenues of the housing project financed with the proceeds of such bonds, or with such proceeds together with a grant from the federal government in aid of such project;

(2) Exclusively from the income and revenues of certain designated housing projects whether or not they were financed in whole or in part with the proceeds of such bonds; or

(3) From its revenues generally.

Any of such bonds may be additionally secured by a pledge of any revenues or a mortgage of any housing project or projects or of any other property of the authority. (Ga. L. 1937, p. 210, § 14; Ga. L. 1939, p. 126, § 3; Ga. L. 1951, p. 127, § 3; Ga. L. 1959, p. 141, § 3; Ga. L. 1962, p. 734, § 3; Ga. L. 1971, p. 94, § 1.)

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 31.

**C.J.S.** — 64A C.J.S. (Rev), Municipal Corporations, § 1699.

**8-3-71. Bonds — Liability of commissioner, state, and political subdivisions; status of bonds in regard to constitutional and statutory debt limitations and restrictions.**

(a) Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

(b) The bonds and other obligations of an authority shall not be a debt of the city, the county, the state, or any political subdivision of the state; and such bonds or obligations shall so state on their face. Neither the city, the county, the state, nor any political subdivision of the state shall be liable on such bonds or other obligations; nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. (Ga. L. 1937, p. 210, § 14; Ga. L. 1939, p. 126, § 3; Ga. L. 1951, p. 127, § 3; Ga. L. 1959, p. 141, § 3; Ga. L. 1962, p. 734, § 3; Ga. L. 1971, p. 94, § 1.)

**8-3-72. Bonds — Exemption of bonds and interest from taxation; article as contract by housing authorities and state with bondholders and transferees.**

Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities. All such bonds shall be exempt from state, county, municipal, or other taxation in the State of Georgia; and interest on such bonds shall be exempt from income taxation or other taxation by the State of Georgia or by any political subdivision thereof. The provisions of this article exempting from taxation both the properties of housing authorities and the bonds and interest thereon shall constitute, by virtue of this article and without the necessity of the same being restated in such bonds, a contract between the bondholders, including all transferees of such bonds, from time to time, on the one hand and the respective housing authorities issuing such bonds and the state on the other. (Ga. L. 1937, p. 210, § 14; Ga. L. 1939, p. 124, § 1.)

**Cross references.** — Constitutional authorization for tax exemptions for public property, Ga. Const. 1983, Art. VII, Sec. II, Paras. I to IV.

### JUDICIAL DECISIONS

**Cited in** Williamson v. Housing Auth., 186 Ga. 673, 199 S.E. 43 (1938); Culbreth v. Southwest Ga. Regional Hous. Auth., 199 Ga. 183, 33 S.E.2d 684 (1945).

### RESEARCH REFERENCES

**C.J.S.** — 84 C.J.S. (Rev), Taxation, § 323 et seq.

**8-3-73. Bonds — Form; terms; rate of interest.**

Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates; mature at such time or times; bear interest at such rate or rates; be in such denomination or denominations; be in such form, either coupon or registered; carry such conversion or registration privileges; have such rank or priority; be executed in such manner; be payable in such medium of payment, at such place or places; and be subject to such terms of redemption, with or without premium, as such resolution, its trust indenture, or mortgage may provide. (Ga. L. 1937, p. 210, § 15; Ga. L. 1939, p. 126, § 3; Ga. L. 1951, p. 127, § 3; Ga. L. 1959, p. 141, § 3; Ga. L. 1962, p. 734, § 3; Ga. L. 1970, p. 113, § 1; Ga. L. 1971, p. 94, § 1; Ga. L. 1980, p. 1094, § 1.)

**Cross references.** — Repeal of interest rate limitations, § 36-82-123.

**8-3-74. Bonds — Public sale of bonds; exceptions.**

The bonds of an authority may be sold at public or private sale in such a manner and for such price as the authority may determine to be in the best interest of the authority. (Ga. L. 1937, p. 210, § 15; Ga. L. 1939, p. 126, § 3; Ga. L. 1951, p. 127, § 3; Ga. L. 1959, p. 141, § 3; Ga. L. 1962, p. 734, § 3; Ga. L. 1971, p. 94, § 1; Ga. L. 1980, p. 1094, § 1; Ga. L. 1987, p. 283, § 4; Ga. L. 1993, p. 1067, § 3.)

**8-3-75. Bonds — Validity of signatures; negotiability.**

In case any of the commissioners or officers of the authority whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until such delivery. Any law to the contrary notwithstanding, any bonds issued pursuant to this article shall be fully negotiable. (Ga. L. 1937, p. 210, § 15.)

**8-3-76. Bonds — Effect of recital of purpose on face of bond.**

Any bond reciting in substance that it has been issued by an authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed, in any action or proceeding involving the validity or enforceability of such bond or the security therefor, to have been issued for a housing project of such character. (Ga. L. 1937, p. 210, § 15.)



**8-3-77. Powers of authorities as to securing payment of bonds and lease obligations.**

In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, an authority shall have power:

(1) To pledge all or any part of its gross or net rents, fees, or revenues to which its right then exists or may thereafter come into existence;

(2) To mortgage all or any part of its real or personal property then owned or thereafter acquired;

(3) To covenant against pledging all or any part of its rents, fees, and revenues or against mortgaging all or any part of its real or personal property to which its right or title then exists or may thereafter come into existence or to covenant against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional, debts or obligations may be incurred by it;

(4) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed, or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, to covenant for their redemption, and to provide the terms and conditions thereof;

(5) To covenant, subject to the limitations contained in this article, as to rents and fees to be charged in the operation of a housing project or projects, as to the amount to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes; and to covenant as to the use and disposition of the moneys held in such funds;

(6) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated; to prescribe the amount of bonds the holders of which must consent thereto; and to prescribe the manner in which such consent may be given;

(7) To covenant as to the use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance moneys;

(8) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation; and to

covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;

(9) To vest in a trustee or trustees or the holders of bonds or any proportion of them the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in a trustee or trustees the right, in the event of a default by said authority, to take possession and use, operate, and manage any housing project or part thereof, and to collect the rents and revenues arising therefrom, and to dispose of such moneys in accordance with the agreement of the authority with said trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any covenant or rights securing or relating to the bonds; and

(10) To exercise all or any part or combination of the powers granted by this Code section; to make covenants other than and in addition to the covenants expressly authorized by this Code section, of like or different character; to make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bond or, in the absolute discretion of said authority, as will tend to make the bonds more marketable, notwithstanding that such covenants, acts, or things may not be enumerated in this Code section. (Ga. L. 1937, p. 210, § 16; Ga. L. 1939, p. 126, §§ 2, 3; Ga. L. 1951, p. 127, §§ 2, 3; Ga. L. 1959, p. 141, §§ 2, 3; Ga. L. 1962, p. 734, §§ 2, 3; Ga. L. 1971, p. 94, § 1.)

### JUDICIAL DECISIONS

**Cited** in Mortgage Counseling Servs., Inc.  
v. Housing Auth., 195 Ga. App. 833, 395  
S.E.2d 306 (1990).

### 8-3-78. Remedies of obligee of an authority generally.

An obligee of an authority shall have the right, in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action, or proceeding at law or in equity, to compel said authority and the commissioners, officers, agents, or employees thereof to observe each and every term, provision, and covenant contained in any contract of said authority with or for the benefit of such obligee and to require the carrying out of any or all such covenants and agreements of said authority and the fulfillment of all duties imposed upon said authority by this article; and

(2) By suit, action, or proceeding in equity, to enjoin any acts or things which may be unlawful or the violation of any of the rights of such obligee of said authority. (Ga. L. 1937, p. 210, § 17.)

### JUDICIAL DECISIONS

**Right of obligee of authority to mandamus.** — Although mandamus will not lie where there is another specific legal remedy, where the statute creating the housing authority specifically provides that all real property of the authority is totally exempt from levy and sale by virtue of an execution and authorizes the authority to pledge all or any part of its gross or net rents, fees, or

revenues to secure the payment of any bonds issued by it, an action upon the contract and any judgment rendered therein or execution based thereon would not afford the plaintiff an adequate remedy for the enforcement of its claim, and the obligee has the right to compel the authority by mandamus. *Housing Auth. v. Ayers*, 211 Ga. 728, 88 S.E.2d 368 (1955).

### 8-3-79. Additional remedies conferrable on obligee by an authority.

An authority shall have power by its resolution, trust indenture, mortgage, lease, or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instrument, by suit, action, or proceeding in any court of competent jurisdiction:

(1) To cause possession of any housing project or any part thereof to be surrendered to any such obligee;

(2) To obtain the appointment of a receiver of any housing project of said authority or any part thereof and of the rents and profits therefrom. If such receiver is appointed, he may enter and take possession of such housing project or any part thereof and operate and maintain it, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said authority as the court shall direct; and

(3) To require said authority and the commissioners thereof to account as if it and they were the trustees of an express trust. (Ga. L. 1937, p. 210, § 18; Ga. L. 1939, p. 126, §§ 2, 3; Ga. L. 1951, p. 127, §§ 2, 3; Ga. L. 1959, p. 141, §§ 2, 3; Ga. L. 1962, p. 734, §§ 2, 3; Ga. L. 1971, p. 94, § 1; Ga. L. 1990, p. 8, § 8.)

### 8-3-80. Exemption of property of authorities from execution sale; charges or liens on property of authorities; enforcement of mortgages, pledges, or liens by obligees of authorities.

All real property of an authority shall be exempt from levy and sale by virtue of an execution; and no execution or other judicial process shall issue



against the same nor shall any judgment against an authority be a charge or lien upon its real property, provided that this Code section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of an authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees, or revenues. (Ga. L. 1937, p. 210, § 19.)

JUDICIAL DECISIONS

**Cited** in *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945); *Sasser & Co. v. Griffin*, 133 Ga. App. 83, 210 S.E.2d 34 (1974).

8-3-81. Bonds and other obligations of authorities as legal investments.

Notwithstanding any restrictions on investments contained in any laws of this state, the state and all public officers, municipal corporations, political subdivisions, and public bodies; all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority pursuant to this article, or issued by any public housing authority or agency in the United States, when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof. Such bonds and other obligations shall be authorized security for all public deposits, it being the purpose of this Code section to authorize any persons, firms, corporations, associations, political subdivisions, bodies, and officers, public or private, to use any funds owned or controlled by them, including but not limited to sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds or other obligations; provided, however, that nothing contained in this Code section shall be construed as relieving any person, firm, or corporation from any duty of exercising reasonable care in selecting securities. (Ga. L. 1939, p. 122, § 1; Ga. L. 1951, p. 127, § 3; Ga. L. 1959, p. 141, § 3; Ga. L. 1962, p. 734, § 3; Ga. L. 1971, p. 94, § 1; Ga. L. 1989, p. 14, § 8.)

RESEARCH REFERENCES

**ALR.** — Rights and liabilities of municipal assessments or other special funds collected as to interest earned on improvement or held by it, 143 ALR 1341.

## PART 5

## REGIONAL HOUSING AUTHORITIES

**8-3-100. Procedure for creating an authority.**

If the governing body of each of two or more contiguous counties by resolution declares that there is a need for one housing authority to be created for all of such counties to exercise in such counties powers and other functions prescribed for a regional housing authority, a public body corporate and politic to be known as a regional housing authority shall thereupon exist for all of such counties and shall exercise its powers and other functions in such counties. Thereupon, each county housing authority created for each of such counties shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as provided in this part. Notwithstanding any other provision of this Code section to the contrary, the governing body of a county shall not adopt a resolution as aforesaid if there is a county housing authority created for such county which has any bonds or notes outstanding unless, first, all holders of such bonds and notes consent in writing to the substitution of such regional housing authority in lieu of such county housing authority on all such bonds and notes, and, second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all rights, contracts, obligations, and property, real and personal, of such county housing authority to such regional housing authority as provided in this part. When the above two conditions are complied with and such regional housing authority is created and authorized to exercise its powers and other functions, all rights, contracts, agreements, obligations, and property, real and personal, of such county housing authority shall be in the name of and vest in such regional housing authority; and all obligations of such county housing authority shall be the obligations of such regional housing authority; and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority. (Ga. L. 1943, p. 146, § 6; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1.)

**JUDICIAL DECISIONS**

**Cited** in *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945).

## OPINIONS OF THE ATTORNEY GENERAL

**Operation of regional authority renders county authority obsolete.** — It is clear from the language of Ga. L. 1943, p. 146, § 6 (see O.C.G.A. § 8-3-100) that any county author-

ity within the area of operation of a regional authority must cease to operate upon the establishment of the regional authority. 1950-51 Op. Att'y Gen. p. 99.

**8-3-101. Transfer of property to an authority.**

When any real property of a county housing authority vests in a regional housing authority as provided in Code Section 8-3-100, the county housing authority shall execute a deed of such property to the regional housing authority, which thereupon shall file such deed in the office provided for the filing of deeds, provided that nothing contained in this Code section shall affect the vesting of property in the regional housing authority as provided in Code Section 8-3-100. (Ga. L. 1943, p. 146, § 6.)

## JUDICIAL DECISIONS

**Cited** in *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945).

**8-3-102. Conditions precedent to adoption of resolution declaring need for an authority.**

(a) The governing body of each of two or more contiguous counties may by resolution declare that there is a need for one regional housing authority to be created for all such counties to exercise in such counties powers and other functions prescribed for a regional housing authority, only if such governing body finds:

(1) That insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford; and

(2) That a regional housing authority would be a more efficient or economical administrative unit than the housing authority of such county.

(b) In determining whether dwelling accommodations are unsafe or insanitary, the governing body of a county shall take into consideration the safety and sanitation of dwellings, the light and air space available to the inhabitants of such dwellings, the degree of overcrowding, the size and arrangement of the rooms, and the extent to which conditions which endanger life or property by fire or other causes exist in such dwellings. (Ga. L. 1943, p. 146, § 6.)



## JUDICIAL DECISIONS

Cited in *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945).

**8-3-103. Public hearings on adoption of resolution.**

The governing body of a county shall not adopt any resolution authorized by Code Sections 8-3-100, 8-3-102, and 8-3-104 unless a public hearing has first been held. The clerk of such county shall give notice of the time, place, and purpose of the public hearing at least ten days prior to the day on which the hearing is to be held. Such notice shall be given by publication in a newspaper published in such county or, if there is no newspaper published in such county, in a newspaper published in the state and having a general circulation in such county. Upon the date fixed for such public hearing, an opportunity to be heard shall be granted to all residents of such county and to all other interested persons. (Ga. L. 1943, p. 146, § 6.)

## JUDICIAL DECISIONS

Cited in *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945).

**8-3-104. Resolution as conclusive evidence of an authority's establishment; sufficiency of resolution; admissibility.**

In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the regional housing authority, the regional housing authority shall be conclusively deemed to have become created as a public body corporate and politic and to have become established and authorized to transact business and exercise its powers under this part upon proof of the adoption of a resolution by the governing body of each of the counties creating the regional housing authority declaring the need for the regional housing authority. Each such resolution shall be deemed sufficient if it declares that there is need for the regional housing authority and finds in substantially such terms as appear in paragraphs (1) and (2) of subsection (a) of Code Section 8-3-102, no further detail being necessary, that the conditions enumerated in those paragraphs exist. A copy of such resolution of the governing body of a county duly certified by the clerk of such county shall be admissible in evidence in any suit, action, or proceeding. (Ga. L. 1943, p. 146, § 6; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1.)

## JUDICIAL DECISIONS

**Cited** in *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945).

**8-3-105. Powers of an authority generally.**

Except as otherwise provided in this part, a regional housing authority and the commissioners thereof shall, within the area of operation of such regional housing authority, have the same functions, rights, powers, duties, privileges, immunities, and limitations provided for housing authorities created for cities or counties and the commissioners of such housing authorities. All the provisions of law applicable to housing authorities created for cities or counties and the commissioners of such authorities shall be applicable to regional housing authorities and the commissioners thereof. (Ga. L. 1943, p. 146, § 6; Ga. L. 1951, p. 127, § 2; Ga. L. 1959, p. 141, § 2; Ga. L. 1962, p. 734, § 2.)

## JUDICIAL DECISIONS

**Cited** in *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945).

**8-3-106. Commissioners — Appointment by county governing bodies.**

The governing bodies of the counties desiring to form a regional housing authority shall have the right to establish by resolution the composition and size of the board of commissioners of the regional housing authority; provided, however, that each county shall have at least one commissioner on the board of commissioners of the regional housing authority and that at least one of the commissioners shall be a recipient of direct assistance from a public housing authority located within such region. The governing body of each county shall appoint the successors of the commissioner or commissioners appointed by it. A certificate of the appointment of any commissioner appointed pursuant to this Code section shall be filed with the clerk of the county, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. (Ga. L. 1943, p. 146, § 6; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1; Ga. L. 1997, p. 573, § 1; Ga. L. 1999, p. 737, § 2.)

## JUDICIAL DECISIONS

**Cited** in *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945).

**8-3-107. Commissioners — Appointment of additional commissioner.**

If the area of operation of a regional housing authority consists of an even number of counties, the commissioners of the regional housing authority appointed by the governing bodies of such counties shall appoint one additional commissioner whose term of office shall be as provided in Code Section 8-3-108 for a commissioner of a regional housing authority. The commissioners of such authority appointed by the governing bodies of such counties shall likewise appoint each person to succeed such additional commissioner, provided that the term of office of such person begins during the terms of office of the commissioners appointing him. A certificate of the appointment of any such additional commissioner of such regional housing authority shall be filed with the other records of the regional housing authority and shall be conclusive evidence of the due and proper appointment of such additional commissioner. (Ga. L. 1943, p. 146, § 6; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1.)

**JUDICIAL DECISIONS**

**Cited** in *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945).

**8-3-108. Commissioners — Terms of office; removal; record of removal proceedings.**

(a) The commissioners of a regional housing authority shall be appointed for terms of five years, except that all vacancies shall be filled for the unexpired terms. Each commissioner shall hold office until his successor has been appointed and has qualified.

(b) For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed by the officer or officers, or their successors, appointing such commissioner; but he shall be removed only after he has been given a copy of the charges at least ten days prior to the hearing thereon and has had an opportunity to be heard in person or by counsel.

(c) In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed as required for the certificate of appointment of such commissioner. (Ga. L. 1943, p. 146, § 6; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1.)

**JUDICIAL DECISIONS**

**Cited** in *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945).



**8-3-109. Commissioners — Vesting of powers of an authority in commissioners; selection of chairman and other officers; employees; quorum; location of meetings.**

(a) The commissioners shall constitute the regional housing authority, and the powers of such authority shall be vested in such commissioners in office from time to time.

(b) The commissioners of a regional housing authority shall elect a chairman from among the commissioners and shall have power to select or employ such other officers and employees as the regional housing authority may require.

(c) A majority of the commissioners of a regional housing authority shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes.

(d) Nothing contained in this article shall be construed to prevent meetings of the commissioners of a housing authority anywhere within the perimeter boundaries of the area of operation of the authority or within any additional area where the housing authority is authorized to undertake a housing project. (Ga. L. 1943, p. 146, § 6; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1.)

**JUDICIAL DECISIONS**

**Cited** in *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945).

**8-3-110. Area of operation of county and regional authorities.**

The area of operation of a housing authority created for a county shall include all of the county for which it is created; and the area of operation of a regional housing authority shall include all of the counties for which such regional housing authority is created and established, provided that a county or regional housing authority shall not undertake any housing project or projects within the boundaries of any city unless a resolution shall have been adopted by the governing body of such city, and also by any housing authority which shall have been theretofore established and authorized to exercise its powers in such city, declaring that there is a need for the county or regional housing authority to exercise its powers within such city. (Ga. L. 1943, p. 146, § 6.)

**Editor's notes.** — The language of this section was enacted by a 1943 amendment to Ga. L. 1937, p. 210, and was designated by Section 4B of the 1937 Act. The 1937 Act was amended further by Ga. L. 1952, p. 365, § 1, which repealed Section 4B and enacted a new Section 4B. However, the new Section 4B contained language which wholly repeated the language of the original Section

4B. Since the 1952 Act thus did not have the practical effect of repealing the language of the original Section 4B, the 1943 amendment (Ga. L. 1943, p. 146, § 6) is being treated as the sole basis for this section. The remainder of the language of the Section 4B enacted by the 1952 Act is codified at Code Sections 8-3-111 through 8-3-118.

### JUDICIAL DECISIONS

**Cited** in *Culbreth v. Southwest Ga. Regional Hous. Auth.*, 199 Ga. 183, 33 S.E.2d 684 (1945); *Brown v. Housing Auth.*, 240 Ga.

647, 242 S.E.2d 143 (1978); *Anderson v. City of Alpharetta*, 770 F.2d 1575 (11th Cir. 1985).

### OPINIONS OF THE ATTORNEY GENERAL

**County authority abolished upon establishment of regional authority.** — It is clear from the language of Ga. L. 1943, p. 146, § (see O.C.G.A. § 8-3-100) that any county

authority within the area of operation of a regional authority must cease to operate upon the establishment of the regional authority. 1950-51 Op. Att'y Gen. p. 99.

### 8-3-111. Addition of counties to an authority — Procedure; effect.

(a) The area of operation of a regional housing authority shall be increased from time to time to include one or more additional contiguous counties not already within the area of operation of a regional housing authority if the governing body of each of the counties then included in the area of operation of such regional housing authority, the commissioners of the regional housing authority, and the governing body of each such additional county or counties each adopt a resolution declaring that there is a need for the inclusion of such additional county or counties in the area of operation of such regional housing authority. Upon the adoption of such resolution, the county housing authority created for each such additional county shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as provided in Code Section 8-3-112.

(b) Notwithstanding any other provision of this Code section, such resolutions shall not be adopted if there is a county housing authority created for any such additional county which has any bonds or notes outstanding unless, first, all holders of such bonds and notes consent in writing to the substitution of such regional housing authority in lieu of such county housing authority as the obligor thereon and, second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided.

(c) When the above two conditions are complied with and the area of operation of such regional housing authority is increased to include such additional county, as provided in this Code section, all rights, contracts, agreements, obligations, and property, real and personal, of such county housing authority shall be in the name of and vest in such regional housing authority, all obligations of such county housing authority shall be the obligation of such regional housing authority, and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority. (Ga. L. 1952, p. 365, § 1.)

**8-3-112. Addition of counties to an authority — Transfer of property to authority.**

When any real property of a county housing authority vests in a regional housing authority as provided in Code Section 8-3-111, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds, provided that nothing contained in this Code section shall affect the vesting of property in the regional housing authority as provided in Code Section 8-3-111. (Ga. L. 1952, p. 365, § 1.)

**8-3-113. Addition of counties to an authority — Conditions precedent to adoption of resolution declaring need for expansion of authority.**

The governing body of each of the counties in the area of operation of the regional housing authority, the commissioners of the regional housing authority, and the governing body of each such additional county or counties may by resolution declare that there is a need for the inclusion of such county or counties in the area of operation of the regional housing authority, only if:

(1) The governing body of each such additional county or counties finds that insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford; and

(2) The governing body of each of the counties then included in the area of operation of the regional housing authority, the commissioners of the regional housing authority, and the governing body of each such additional county or counties find that the regional housing authority would be a more efficient or economical administrative unit if the area of operation of the regional housing authority is increased to include such additional county or counties. (Ga. L. 1952, p. 365, § 1.)



**8-3-114. Exclusion of counties from regional authority — Procedure generally; effect of reducing area of operation to one county.**

(a) The area of operation of a regional housing authority which has undertaken the development of one or more housing projects may be decreased from time to time to exclude one or more counties from such area if the governing body of each of the counties in such area and the commissioners of the regional housing authority each adopt a resolution declaring that there is a need for excluding such county or counties from such area, provided that this action may not be taken if the regional housing authority has outstanding any bonds or notes, unless all holders of such bonds and notes consent in writing to such action.

(b) If any action taken pursuant to subsection (a) of this Code section decreases the area of operation of the regional housing authority to only one county, such authority shall thereupon constitute and become a housing authority for such county in the same manner and with the same rights, powers, and immunities as though such authority were created by and authorized to transact business and exercise its powers pursuant to Code Sections 8-3-4 through 8-3-6; and the commissioners of such authority shall be thereupon appointed as provided in Code Section 8-3-50 for the appointment of commissioners of a housing authority created for a county. (Ga. L. 1952, p. 365, § 1.)

**8-3-115. Exclusion of county from regional authority — Conditions precedent to adoption of resolution declaring need for exclusion.**

The governing body of each of the counties in the area of operation of the regional housing authority and the commissioners of the regional housing authority may adopt a resolution declaring that there is a need for excluding a county or counties from such area only if:

(1) Each such governing body of the counties to remain in the area of operation of the regional housing authority and the commissioners of the regional housing authority find that, because of facts arising or determined subsequent to the time when such area first included the county or counties to be excluded, the regional housing authority would be a more efficient or economical administrative unit if such county or counties were excluded from such area; and

(2) The governing body of each such county or counties to be excluded and the commissioners of the regional housing authority each also find that, because of the aforesaid changed facts, another housing authority for such county or counties would be a more efficient or economical administrative unit to function in such county or counties. (Ga. L. 1952, p. 365, § 1.)

**8-3-116. Detachment of a county by its own resolution; assumption of regional authority's bonds, notes, and other obligations by an authority thereafter established for county.**

(a) Notwithstanding Code Sections 8-3-114 and 8-3-115, the governing body of any county may by resolution detach the county from the area of operation of its regional housing authority if such housing authority has undertaken no housing projects and, upon the adoption of such resolution, the county shall cease to be included in the area of operation of the regional housing authority, provided that this action may not be taken if the regional housing authority has outstanding any bonds, notes, or other obligations, unless all the holders of such bonds, notes, or other obligations consent in writing to such action.

(b) The housing authority thereafter established for any county detached from the area of operation of a regional housing authority may assume and pay all or any portion of the outstanding bonds, notes, or other obligations of such regional housing authority, provided that the exclusion of any county from the area of operation of the regional housing authority and the failure of the housing authority of such county to assume all or any part of such bonds, notes, or other obligations shall not in any way affect the said bonds, notes, or other obligations nor the rights or remedies of the obligees of such regional housing authority with respect thereto. (Ga. L. 1952, p. 365, § 1.)

**8-3-117. Creation of an authority for a county after exclusion or detachment from a regional authority; appointment of commissioners; scope of powers; subsequent inclusion in a regional authority.**

(a) At any time after the exclusion or detachment of any county from the area of operation of a regional housing authority, as provided in Code Sections 8-3-114 through 8-3-116, the governing body of any such county may adopt a resolution declaring that there is need for a housing authority in the county if the governing body shall find such need according to the provisions of Code Sections 8-3-4 through 8-3-6. Thereafter a public body corporate and politic to be known as the housing authority of the county shall exist for such county, and five commissioners shall be appointed for such authority by the governing body of such county. The authority may transact business and exercise its powers in the same manner and shall have the same rights, powers, and immunities as though created by said Code Sections 8-3-4 through 8-3-6.

(b) Nothing contained in this Code section shall be construed as preventing such county from thereafter being included within the area of operation of a regional housing authority as provided in this article. (Ga. L. 1952, p. 365, § 1.)

**8-3-118. Public hearing prior to adoption of resolution.**

The governing body of a county shall not adopt any resolution authorized by Code Sections 8-3-110 through 8-3-117 unless a public hearing has first been held in the manner prescribed in Code Section 8-3-103. (Ga. L. 1952, p. 365, § 1.)

**PART 6****PROVIDING HOUSING FOR PERSONS ENGAGED IN NATIONAL DEFENSE  
INDUSTRIES OR ACTIVITIES****8-3-130. Declaration of necessity.**

The preparation for national defense requires a great migration of persons to engage in national defense industries and activities which would be jeopardized unless housing is available for such persons. An acute shortage of housing for such persons exists or impends in localities in the state. It is therefore of vital importance that all agencies qualified to do so have the powers and authority to develop and administer projects to provide housing for persons engaged in war or national defense activities and to aid and cooperate with the federal government in making such housing available for such persons. (Ga. L. 1943, p. 161, § 1; Ga. L. 1951, p. 607, § 1.)

**8-3-131. Definitions.**

As used in this part, the term:

- (1) "City" means any city in the state;
- (2) "Federal government" means the United States government and any department, agency, or instrumentality thereof; and
- (3) "Persons" means an individual and those members of his family living with him. (Ga. L. 1943, p. 161, § 6.)

**8-3-132. Conditions precedent to exercise of powers by an authority; scope of rights and powers of an authority generally.**

(a) Any housing authority established pursuant to this article may undertake the development or administration, or both, of projects to provide housing for persons engaged or to be engaged in national defense industries or activities if it finds that an acute shortage of housing for such persons exists or impends in its area of operation or any part thereof and that the necessary housing would not otherwise be provided when needed.

(b) In the ownership, development, or administration of projects under this part, a housing authority shall have all the rights, powers, privileges, and



immunities that it has under any provision of law relating to the ownership, development, or administration of low-rent housing and slum clearance projects in the same manner as though all the provisions of law applicable thereto were applicable to projects developed or administered hereunder, provided that a housing authority may, notwithstanding the provisions of other laws, make and agree to make, with respect to any project owned and administered by it under this part, such payments for services and facilities furnished for such project by the city, county, or other political subdivision of the state in which such project is located as may be agreed upon; provided, further, that a project developed or administered under this part by a housing authority to provide housing for persons engaged or to be engaged in national defense industries or activities shall not be subject to the limitations provided in Code Section 8-3-12 or in the second sentence of Code Section 8-3-11. (Ga. L. 1943, p. 161, § 2; Ga. L. 1951, p. 607, § 2.)

#### RESEARCH REFERENCES

**ALR.** — Constitutionality and construction of Emergency Price Control Act as relating to rent, 155 ALR 1461; 156 ALR 1459; 157 ALR 1457; 158 ALR 1464.

#### **8-3-133. Existence of war or national emergency as condition precedent to initiation of project.**

(a) No housing authority shall initiate the development of any housing project under this part after the termination of a period of war or national emergency as declared by the President or the Congress of the United States.

(b) Notwithstanding the provisions of subsection (a) of this Code section, housing authorities may initiate projects within areas which, as of January 1, 1981, are designated as impacted areas in which housing is necessary in the interest of national security, for purposes of Section 810(b) of the federal National Housing Act. (Ga. L. 1943, p. 161, § 9; Ga. L. 1951, p. 607, § 3; Ga. L. 1981, p. 1420, §§ 1, 2; Ga. L. 1982, p. 3, § 8.)

#### **8-3-134. Cooperation by an authority with federal government, other public bodies, and private agencies; leases of projects by an authority from federal government.**

A housing authority may exercise any or all of its powers to aid and cooperate with the federal government in making housing available for persons engaged or to be engaged in national defense industries or activities; may act as agent for the federal government in developing and administering projects undertaken by the federal government to provide such housing; may lease such projects from the federal government; and may arrange with other public bodies and with private agencies for such services and facilities as may be needed for such projects. (Ga. L. 1943, p.

161, § 3; Ga. L. 1951, p. 127, § 2; Ga. L. 1951, p. 607, § 2; Ga. L. 1959, p. 141, § 2; Ga. L. 1962, p. 734, § 2.)

**8-3-135. Aid and cooperation by state public bodies in development and administration of projects.**

(a) With respect to projects undertaken by a housing authority or the federal government to provide housing for persons engaged or to be engaged in national defense industries or activities, any state public body, as defined in Code Section 8-3-152, shall have all the rights and powers to aid and cooperate in the development or administration of such projects that it has under any provision of law relating to its aiding or cooperating in the development or administration of low-rent housing and slum clearance projects in the same manner as though all the provisions of law applicable thereto were applicable to projects undertaken by a housing authority or by the federal government to provide housing for persons engaged or to be engaged in national defense industries or activities.

(b) With respect to projects located outside the territorial boundaries of a state public body which are undertaken by a housing authority or the federal government to provide housing for persons engaged or to be engaged in national defense industries or activities, such state public body may furnish or contract to furnish, upon such terms as it deems advisable, public services or facilities for any such project if the governing body of the city or county, as the case may be, in which such project is located shall, by resolution, consent thereto. (Ga. L. 1943, p. 161, § 4; Ga. L. 1951, p. 607, § 2.)

**8-3-136. Issuance of bonds, notes, and other obligations by an authority.**

(a) The development of a project shall be deemed to have been initiated under this part if a housing authority has issued any bonds, notes, or other obligations to finance the cost thereof.

(b) Bonds or other obligations issued by a housing authority for a project developed or administered under this part shall be security for public deposits and legal investments to the same extent and for the same persons, institutions, associations, corporations, bodies, and officers as bonds or other obligations issued pursuant to other provisions of this article. (Ga. L. 1943, p. 161, §§ 5, 6; Ga. L. 1951, p. 127, § 3; Ga. L. 1959, p. 141, § 3; Ga. L. 1962, p. 734, § 3; Ga. L. 1971, p. 94, § 1.)

**8-3-137. Authorization for an authority to undertake projects and to cooperate with or act as agent for federal government; applicability of limitations, restrictions, and requirements in other; scope of powers.**

(a) This part shall constitute an independent authorization for a housing authority to undertake the development or administration of projects to

provide housing for persons engaged or to be engaged in national defense industries or activities and to cooperate with, or act as agent for, the federal government in the development or administration of projects undertaken by the federal government to make housing available for such persons. In acting under this part, a housing authority shall not be subject to any limitations, restrictions, or requirements of other laws (except those relating to land acquisition) which prescribe or limit the procedure or action to be taken in the development or administration of any buildings, property, or public works, including, but not limited to, low-rent housing and slum clearance projects or undertakings or projects of municipal or public corporations or political subdivisions or agencies of the state.

(b) A housing authority may do any and all things necessary or desirable to cooperate with, or act as agent for, the federal government, or to secure financial aid, for the expeditious development or the administration of projects to make housing available for persons engaged or to be engaged in national defense industries or activities and to effectuate the purposes of this part. (Ga. L. 1943, p. 161, § 7; Ga. L. 1951, p. 127, § 2; Ga. L. 1951, p. 607, § 2; Ga. L. 1959, p. 141, § 2; Ga. L. 1962, p. 734, § 2.)

## ARTICLE 2

### HOUSING COOPERATION LAW

#### JUDICIAL DECISIONS

**As to constitutionality of the Housing Cooperation Law,** see *Williamson v. Housing Auth.*, 186 Ga. 673, 199 S.E. 43 (1938).

#### 8-3-150. Short title.

This article may be referred to as the "Housing Cooperation Law." (Ga. L. 1937, p. 697, § 1.)

**Law reviews.** — For survey of developments in Georgia real property law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 219 (1981).

#### 8-3-151. Legislative findings and declaration of necessity.

It has been found and declared in Article 1 of this chapter, the "Housing Authorities Law," that there exist in the state unsafe and insanitary housing conditions and a shortage of safe and sanitary dwelling accommodations for persons of low income; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities; and that the public interest requires the remedying of these conditions. It is found and declared that the assistance



provided in this article for the remedying of the conditions set forth in Article 1 of this chapter constitutes a public use and purpose and an essential governmental function for which public moneys may be spent, and that the provisions hereinafter enacted are necessary in the public interest. (Ga. L. 1937, p. 697, § 2.)

### 8-3-152. Definitions.

As used in this article, the term:

(1) "Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(2) "Housing authority" means any housing authority created pursuant to Article 1 of this chapter, the "Housing Authorities Law."

(3) "Housing project" means any work or undertaking of a housing authority pursuant to Article 1 of this chapter or any similar work or undertaking of the federal government.

(4) "State public body" means any city, county, commission, district, authority, or other subdivision or public body of the state. (Ga. L. 1937, p. 697, § 3.)

### 8-3-153. Powers of state public bodies as to housing projects generally.

(a) For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of housing projects located within the area in which it is authorized to act, any state public body may, upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, convey, or lease any of its property to a housing authority or the federal government;

(2) Cause parks, playgrounds, recreational or community facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(3) Furnish, dedicate, close, pave, install, grade, regrade, plan, or replan streets, roads, roadways, alleys, sidewalks, or other places which it is otherwise empowered to undertake;

(4) Plan or replan, zone or rezone any part of such state public body; make exceptions from building regulations and ordinances; and, in the case of a city, change its map;

(5) Cause services to be furnished to a housing authority of the character which such state public body is otherwise empowered to furnish;

(6) Enter into agreements with respect to the exercise by such state public body of its powers relating to the repair, closing, or demolition of unsafe, insanitary, or unfit dwellings;

(7) Notwithstanding any other law, employ any funds belonging to or within the control of such state public body, including funds derived from the sale or furnishing of property or facilities to a housing authority, in the purchase of the bonds or other obligations of a housing authority; and exercise all the rights of any holder of such bonds or other obligations;

(8) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a housing authority or the federal government respecting action to be taken by such state public body pursuant to any of the powers granted by this article. If at any time title to, or possession of, any project is held by any public body or governmental agency authorized by law to engage in the development or administration of low-rent housing, slum clearance, or urban redevelopment projects, including any agency or instrumentality of the United States of America, such agreements shall inure to the benefit of and may be enforced by such public body or governmental agency; and

(9) Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of such housing projects.

(b) With respect to any housing project which a housing authority has acquired or taken over from the federal government and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation, and other protection, no state public body shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction.

(c) In connection with any public improvements made by a state public body in exercising the powers granted by this article, such state public body may incur the entire expense thereof. Any law to the contrary notwithstanding, any sale, conveyance, lease, or agreement provided for in this Code section may be made by a state public body without appraisal, public notice, advertisement, or public bidding. (Ga. L. 1937, p. 697, § 4; Ga. L. 1939, p. 127, § 1; Ga. L. 1951, p. 204, § 1.)

#### JUDICIAL DECISIONS

**Authorities for public use and purpose; scope of city's authority.** — Housing authorities are for a public use and purpose, and broad powers are given to the governing body of a city by the Housing Cooperation Law, Ga. L. 1937, p. 697 (see O.C.G.A.

§ 8-3-151 et seq.) *Telford v. City of Gainesville*, 208 Ga. 56, 65 S.E.2d 246 (1951).

**City may make agreement with housing authority for elimination of unsafe dwellings.** — A city's agreement to cooperate with its local housing authority in effecting elimination of unsafe or insanitary dwellings does not contemplate or provide for an

unlawful delegation of its police power to abate nuisances to the public housing administration but amounts only to an assurance of a proper exercise of it by the city to the end that it will do what it ought in any event to do, namely, eliminate unsafe or insanitary dwellings in the interest of general welfare. *Telford v. City of Gainesville*, 208 Ga. 56, 65 S.E.2d 246 (1951).

**8-3-154. Contracts for payments to state public bodies for improvements, services, and facilities provided.**

In connection with any housing project located wholly or partly within the area in which it is authorized to act, any state public body may contract with a housing authority or the federal government with respect to the sum or sums, if any, which the housing authority or the federal government may agree to pay, during any year or period of years, to the state public body for the improvements, services, and facilities to be provided by the state public body for the benefit of said housing project or its residents; but in no event shall the amount of such payments exceed the estimated cost to the state public body of the improvements, services, or facilities to be so supplied; provided, however, that the absence of a contract for such payments shall in no way relieve state public bodies of the duty to furnish, for the benefit of said housing project and its residents, customary improvements and such services and facilities as state public bodies usually furnish without a service fee. (Ga. L. 1937, p. 697, § 5.)

**8-3-155. Appropriations to an authority by a city or a county for first-year expenses; loans and donations to authority.**

(a) When any housing authority which is created for any city or county becomes authorized to transact business and exercises its powers therein, the city council or the county commissioners, as the case may be, shall immediately make an estimate of the amount of money necessary for the administrative expense and overhead of such housing authority during the first year thereafter and shall appropriate such amount to the authority out of any moneys in such city or county treasury not appropriated to some other purposes. The moneys so appropriated shall be paid to the authority as a donation.

(b) Any city or county located in whole or in part within the area of operation of a housing authority shall have the power from time to time to lend or donate money to the authority or to agree to take such action. The housing authority, when it has money available therefor, shall make reimbursement for all such loans made to it. (Ga. L. 1937, p. 697, § 6.)



## JUDICIAL DECISIONS

**The Housing Cooperation Law, Ga. L. 1937, p. 697 (see O.C.G.A. § 8-3-151 et seq.) is not violative of Ga. Const. 1976, Art. IX, Sec. IV, Para. III, (see Ga. Const. 1983, Art. IX, Sec. II, Para. VIII) which, among other things, provides that the General Assembly shall not authorize any municipality to appropriate money to any corporation except for purely charitable purposes. Williamson v. Housing Auth., 186 Ga. 673, 199 S.E. 43 (1938).**

**Ga. L. 1937, p. 697, § 6 (see O.C.G.A. § 8-3-155) imposes no obligation upon the city to pay operating expenses if there is in the treasury of the city money not appropriated to other purposes. Hogg v. City of Rome, 189 Ga. 298, 6 S.E.2d 48 (1939).**

The Housing Cooperation Law, Ga. L.

1937, p. 697 (see O.C.G.A. § 8-3-151 et seq.) imposes no obligation upon a city to pay the operating expenses of the city housing authority for the first year, unless there is in the city treasury money not appropriated for other purposes. Hogg v. City of Rome, 189 Ga. 298, 6 S.E.2d 48 (1939).

Where a petition alleges that all funds in the city treasury have been appropriated for other purposes, and thus it would constitute a violation of legal duty for the city commissioners to use such appropriated funds, such petition, in the absence of specific allegations that such duty is being violated, may be dismissed, the presumption of law being that such duty will not be so violated. Hogg v. City of Rome, 189 Ga. 298, 6 S.E.2d 48 (1939).

### 8-3-156. Procedure for exercise of powers granted by article to state public bodies.

The exercise by a state public body of the powers granted by this article may be authorized by resolution of the governing body of such state public body. The resolution shall be adopted by a majority of the members of the governing body present at a meeting of said governing body, which resolution may be adopted at the meeting at which such resolution is introduced. Such a resolution or resolutions shall take effect immediately and need not be laid over or published or posted. (Ga. L. 1937, p. 697, § 7; Ga. L. 1939, p. 127, § 2; Ga. L. 1941, p. 253, § 1; Ga. L. 1943, p. 142, §§ 1, 2; Ga. L. 1943, p. 166, §§ 1-3; Ga. L. 1949, p. 23, §§ 1-4; Ga. L. 1959, p. 141, § 4; Ga. L. 1961, p. 54, §§ 2-4.)

## ARTICLE 3

### OFFICE OF HOUSING

**Cross references.** — Urban residential finance authorities for municipalities of 400,000 or more in population, Ch. 41, T. 36.

**Editor's notes.** — Ga. L. 1991, p. 1653, § 1-1, effective July 1, 1991, repealed the Code sections formerly codified as this article and enacted the current article. The former unit consisted of §§ 8-3-170 to 8-3-176, 8-3-176.1, 8-3-177 to 8-3-189 (Part 1), 8-3-190, 8-3-190.1, 8-3-191 to 8-3-193, 8-3-193.1, 8-3-194 to 8-3-198 (Part 2), and 8-3-199 and 8-3-199.1 (Part 3) and was based on Ga. L. 1974, p. 975, §§ 1-17; Ga. L. 1975,

p. 1651, §§ 1-29; Ga. L. 1976, p. 651, § 6; Ga. L. 1977, p. 259, §§ 1-8; Ga. L. 1977, p. 603, §§ 1-3; Ga. L. 1978, p. 1541, § 1; Ga. L. 1978, p. 1543, § 1; Ga. L. 1979, p. 1266, § 1; Ga. L. 1980, p. 351, § 1; Ga. L. 1980, p. 1269, §§ 1-11; Ga. L. 1981, p. 718, §§ 1-9; Ga. L. 1982, p. 3, § 8; Ga. L. 1982, p. 1716, §§ 1-13; Ga. L. 1982, p. 1813, §§ 1, 2, 32-35; Ga. L. 1982, p. 2228, §§ 3, 6; Ga. L. 1983, p. 3, § 6; Ga. L. 1983, p. 1228, §§ 1-10; Ga. L. 1984, p. 22, § 8; Ga. L. 1984, p. 1374, §§ 1-4; Ga. L. 1985, p. 149, § 8; Ga. L. 1985, p. 818, §§ 1, 2; Ga. L. 1985, p. 1121, §§ 1, 2; Ga. L. 1986,

p. 344, § 1; Ga. L. 1986, p. 899, §§ 1, 2, 3, 4, 6, 7; Ga. L. 1987, p. 3, § 8; Ga. L. 1987, p. 234, §§ 1-9; Ga. L. 1988, p. 1550, §§ 1-6; Ga. L. 1989, p. 14, § 8; Ga. L. 1989, p. 792, §§ 1-6; Ga. L. 1990, p. 8, § 8(2); Ga. L. 1990, p. 45, § 1; Ga. L. 1990, p. 1039, §§ 1-11; Ga. L. 1990, p. 2024, § 1. For present provisions governing the Housing and Finance Authority, see Chapter 26 of Title 50.

Georgia Residential Finance Authority, Ga. L. 1974, p. 975, as amended Ga. L. 1975, p. 1651.

Ga. L. 1991, p. 94, § 8, and Ga. L. 1991, p. 391, §§ 1, 2, amended former Code Section 8-3-170 prior to its repeal by Ga. L. 1991, p. 1653, § 1-1.

### JUDICIAL DECISIONS

**Constitutionality.** — The Georgia Residential Finance Authority Act is not unconstitutional on the ground that the state may not make loans, since the funds used to carry out the purposes of the authority are derived from the sale of the authority's revenue bonds, and is thus private, not public, money. *Rich v. State*, 237 Ga. 291, 227 S.E.2d 761 (1976).

**The Georgia Residential Finance Authority Act is a valid exercise of the police power** by the General Assembly pursuant to a legitimate public purpose, namely, the promotion of housing for low and moderate in-

come families and the stimulation of the housing market. *Rich v. State*, 237 Ga. 291, 227 S.E.2d 761 (1976).

**The Georgia Residential Finance Authority Act is not void as being an illegal delegation of legislative power** to the authority. *Rich v. State*, 237 Ga. 291, 227 S.E.2d 761 (1976).

**The Georgia Residential Finance Authority Act does not violate the provisions of the Revenue Bond Law** (see O.C.G.A. Art. 3, Ch. 82, T. 36), in not presenting an allowable undertaking under that law. *Rich v. State*, 237 Ga. 291, 227 S.E.2d 761 (1976).

### OPINIONS OF THE ATTORNEY GENERAL

**Georgia Residential Finance Authority constitutes public housing agency as defined in 42 U.S.C. § 1437a.** — The Georgia Residential Finance Authority is a public housing agency as defined in the United States Housing Act of 1937, 42 U.S.C. § 1437a(6) (now

42 U.S.C. § 1437a(b)(6)), and is empowered to participate in the section 8 Housing Assistance Payments Program created by the Housing and Community Development Act of 1974, 42 U.S.C. § 1437f(a). 1981 Op. Att'y Gen. No. 81-61.

### RESEARCH REFERENCES

**ALR.** — Home Owners' Loan Act, 110 ALR 250; 121 ALR 117; 125 ALR 809.

### 8-3-170. Legislative findings; powers and duties of State Office of Housing.

The General Assembly finds and declares that housing is an issue of paramount concern to this state which affects the health, welfare, and safety of the citizens of this state and the economic viability and planned growth of its communities. The General Assembly further finds and declares that the provision of and planning for housing and housing related matters are issues that are intrinsically intertwined with the ability to provide for the financing of housing activities. For this reason, the General Assembly designates the Georgia Housing and Finance Authority as the State Office of Housing and assigns it the following powers and duties:

(1) To be responsible for the planning, development, and implementation of a coordinated state housing program;

(2) To provide technical and financial assistance on housing and housing related matters throughout the state;

(3) To perform such housing related duties as may be assigned it by the Governor or the General Assembly;

(4) To apply for and receive and to administer federal funds under any federal housing program for which the state is an eligible applicant and, in the administration of such funds, to enter into such contracts as it deems necessary and to expend such state funds as the General Assembly may appropriate for such purposes;

(5) To coordinate activities and work in conjunction with the Farmers Home Administration, which activities may include, but not be limited to, processing loan applicants and loans, community outreach activities, and financial assistance in the form of interest or down payment subsidies or write-downs; and

(6) To coordinate housing related activities and work in conjunction with private, federal, or quasi-governmental entities, which entities shall include, but not be limited to, the Federal Housing Administration, the United States Department of Veterans Affairs, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association. (Code 1981, § 8-3-170, enacted by Ga. L. 1991, p. 1653, § 1-1.)

### **8-3-171. State housing goal and report; assistance by other agencies and political subdivisions.**

The General Assembly affirms the state's policy to provide decent, safe, and affordable housing to all segments of the population of this state. The State Office of Housing is authorized and directed to develop a state housing goal and shall prepare a state housing goal report for presentation to the General Assembly, commencing with the 1990 session and continuing every even-numbered year thereafter. The report shall identify housing needs and housing accomplishments and outline plans for achieving the state housing goal. The state and its agencies, institutions, authorities, commissions, bureaus, and entities which are political subdivisions of the state, cities and counties, local housing authorities, and any urban residential finance authority are authorized and directed to provide such information and perform such duties and functions as may be required to assist the State Office of Housing to prepare its reports and perform its functions. (Code 1981, § 8-3-171, enacted by Ga. L. 1991, p. 1653, § 1-1.)

**Law reviews.** — For article, "Financing Affordability of a Dedicated Revenue Source," see 13 Ga. St. U. L. Rev. 363 (1997).



**8-3-172. Funding for single-family housing; construction requirements.**

(a) The State Office of Housing shall award state or federal funds to construct single-family affordable housing for individuals and families of low and very low income only to persons whose application indicates that the affordable housing that is the subject of the application and for which a building permit is issued on or after July 1, 2000, will be constructed so that:

(1) At least one entrance door, whether located at the front, side, or back of the building:

(A) Is on an accessible route served by a ramp or no-step entrance; and

(B) Has at least a standard 36 inch door;

(2) On the first floor of the building:

(A) Each interior door is at least a standard 32 inch door, unless the door provides access only to a closet of less than 15 square feet in area;

(B) Each hallway has a width of at least 36 inches and is level, with ramped or beveled changes at each door threshold;

(C) Each bathroom wall is reinforced for potential installation of grab bars;

(D) Each electrical panel or breaker box, light switch, or thermostat is not higher than 48 inches above the floor; and

(E) Each electrical plug or other receptacle is at least 15 inches above the floor; and

(3) The main breaker box is located inside the building on the first floor.

(b) A person who builds single-family affordable housing to which this Code section applies may obtain a waiver from the State Office of Housing of the requirement described in subparagraph (a)(1)(A) of this Code section if the cost of grading and other improvements to the terrain which are required in order to meet the requirement of such subparagraph is unreasonably expensive. (Code 1981, § 8-3-172, enacted by Ga. L. 2000, p. 490, § 1.)

**Code Commission notes.** — Pursuant to introductory language of subsection (a) and Code Section 28-9-5, in 2000, “single-family” in subsection (b). was substituted for “single family” in the

## ARTICLE 4

### FAIR HOUSING

**Editor's notes.** — Ga. L. 1988, p. 698, effective July 1, 1988, repealed the Code sections formerly codified as this article and enacted the current article. The former article, which dealt with discrimination in sale, lease, financing, etc., of housing, consisted of §§ 8-3-200 through 8-3-208 and was based on Ga. L. 1978, p. 1593.

Ga. L. 1990, p. 1284, effective July 1, 1990, repealed the Code sections formerly codi-

fied as this article and enacted the current article. The former article, which dealt with fair housing, consisted of Code Sections 8-3-200 through 8-3-215 and was based on Ga. L. 1988, p. 698.

**Administrative rules and regulations.** — Georgia Fair housing law, Official Compilation of Rules and Regulations of State of Georgia, Commission on Equal Opportunity, Chapter 186-2.

### OPINIONS OF THE ATTORNEY GENERAL

**Editor's note.** — Some of the opinions cited below were decided under former Ga. L. 1978, p. 1593.

**Ordinances exceeding scope of article void.** — County and municipal fair housing ordinances, whose scope of coverage exceeds the general state law on the subject of

discrimination in housing accommodations, are in conflict with Ga. Const., Art. I, Sec. II, Para. VII (Ga. Const. 1983, Art. III, Sec. VI, Para. IV) and are therefore void. 1980 Op. Att'y Gen. No. 80-150 (decided under former Ga. L. 1978, p. 1593).

### RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of statutes, or of condominium association's bylaws or regulations, restricting sale, transfer, or lease of condominium units, 17 ALR4th 1247.

State civil rights legislation prohibiting sex discrimination in housing, 81 ALR4th 205.

Evidence of discriminatory effect alone as sufficient to prove, or to establish prima facie case of, violation of Fair Housing Act (42 USCS § 3601 et seq.), 100 ALR Fed. 97.

### 8-3-200. State policy; purposes and construction of article.

(a) It is the policy of the State of Georgia to provide, within constitutional limitations, for fair housing throughout the state.

(b) The general purposes of this article are:

(1) To provide for execution in the state of policies embodied in Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988;

(2) To safeguard all individuals from discrimination in any aspect relating to the sale, rental, or financing of dwellings or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling because of that individual's race, color, religion, sex, disability or handicap, familial status, or national origin;

(3) To promote the elimination of discrimination in any aspect relating to the sale, rental, or financing of dwellings or in the provision of

brokerage services or facilities in connection with the sale or rental of a dwelling because of a person's race, color, religion, sex, disability or handicap, familial status, or national origin; and

(4) To promote the protection of each individual's interest in personal dignity and freedom from humiliation and the individual's freedom to take up residence wherever such individual chooses; to secure the state against domestic strife and unrest which would menace its democratic institutions; to preserve the public safety, health, and general welfare; and to further the interests, rights, and privileges of individuals within the state.

(c) This article shall be broadly construed to further the general purposes stated in this Code section and the special purposes of the particular provision involved. (Code 1981, § 8-3-200, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 1.)

#### RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of § 804(c) of Civil Rights Act of 1968 (Fair Housing Act) (42 USCS § 3604(c)) prohibiting discriminatory notice, statement, or advertisement with respect to sale or rental of dwelling, 142 ALR Fed 1.

Actions under Fair Housing Act (42 USCS § 3601 et seq.), based on sexual harassment or creation of hostile environment, 144 ALR Fed. 595.

Construction and application of § 804(f)

of Fair Housing Act (42 USCA § 3604(f)), prohibiting discrimination in housing because of individual's disability, 148 ALR Fed. 1.

What constitutes reverse or majority race or national origin discrimination violative of federal constitution or statutes — nonemployment cases, 152 ALR Fed. 1.

Award of attorney's fees to prevailing parties in actions under Fair Housing Act, 42 USCA § 3613(c)(2), 159 ALR Fed. 279.

#### 8-3-201. Definitions.

As used in this article, the term:

(1) "Administrator" means the administrator of the Commission on Equal Opportunity created under Article 2 of Chapter 19 of Title 45.

(2) "Aggrieved person" means any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be irrevocably injured by a discriminatory housing practice that is about to occur.

(2.1) "Board of commissioners" means the Board of Commissioners of the Commission on Equal Opportunity created by Code Section 45-19-23 or a panel of three members of said board.

(3) "Complainant" means the person, including the administrator, who files a complaint under Code Section 8-3-208.

(4) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal



negotiations involving the aggrieved person, the respondent, and the administrator.

(5) “Conciliation agreement” means a written agreement setting forth the resolution of the issues in conciliation.

(6) “Covered multifamily dwelling” means a building which consists of four or more units and has an elevator or the ground floor units of a building which consists of four or more units and does not have an elevator.

(7) “Disability” means, with respect to a person:

(A) A physical or mental impairment which substantially limits one or more of such person’s major life activities;

(B) A record of having such an impairment; or

(C) Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance.

(8) “Discriminatory housing practice” means an act that is unlawful under Code Section 8-3-202, 8-3-203, 8-3-204, 8-3-205, or 8-3-222.

(9) “Dwelling” means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(10) “Familial status” means, with respect to a person:

(A) That the person is a parent of or has legal custody of one or more individuals who have not attained the age of 18 years and such individuals are being domiciled with such parent or legal custodian;

(B) That the person is the designee of a parent or other person having legal custody, with the written permission of the parent or other person, and that one or more individuals who have not attained the age of 18 years are being domiciled with such person; or

(C) That the person is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(11) “Family” includes a single individual.

(12) “Person” means one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, or fiduciaries.

(13) “Respondent” means:

(A) The person or other entity or the state or local government or agency accused in a complaint of an unfair housing practice; and

(B) Any other person or entity identified in the course of an investigation and notified as required with respect to respondents so identified under subsection (d) of Code Section 8-3-207.

(14) "State" means the State of Georgia.

(15) "To rent" means to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises not owned by the occupant. (Code 1981, § 8-3-201, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, §§ 2, 3; Ga. L. 1995, p. 1302, § 2.)

### **8-3-202. Unlawful practices in selling or renting dwellings; exceptions.**

(a) Except as exempted by subsection (b) or (d) of this Code section or Code Section 8-3-205, it shall be unlawful:

(1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, disability, familial status, or national origin;

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, disability, familial status, or national origin;

(3) To make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that indicates any preference, limitation, or discrimination based on race, color, religion, sex, disability, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination;

(4) To represent to any person because of race, color, religion, sex, disability, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;

(5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a disability;

(6) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

(A) That buyer or renter;

(B) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(C) Any person associated with that buyer or renter; or

(7)(A) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:

(i) That person;

(ii) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(iii) Any person associated with that person.

(B) For purposes of this paragraph, discrimination includes:

(i) A refusal to permit, at the expense of the person with disabilities, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(ii) A refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(iii) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct those dwellings in such a manner that:

(I) The public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities;

(II) All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with disabilities in wheelchairs; and

(III) All premises within such dwellings contain the following features of adaptive design: (a) an accessible route into and through the dwelling; (b) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (c) reinforcements in bathroom walls to allow later installation of grab bars; and (d) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.



(C) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically disabled people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of subdivision (B)(iii)(III) of this paragraph.

(D) In regard to persons with disabilities, discrimination includes, in connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that the dwellings have at least one building entrance on an accessible route, unless it is impracticable to do so because of the terrain or unusual characteristics of the site.

(b)(1) Nothing in this Code section, other than paragraph (3) of subsection (a) of this Code section, shall apply to:

(A) Any single-family dwelling sold or rented by an owner, if:

(i) Such private individual owner does not own more than three such single-family dwellings at any one time;

(ii) Such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of more than three such single-family dwellings at any one time;

(iii) Such dwelling is sold or rented:

(I) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person; and

(II) Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of subsection (c) of this Code section; but nothing in this paragraph shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title; or

(B) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(2) In the case of the sale of any such single-family dwelling by a private individual owner not residing in such dwelling at the time of such sale or who was not the most recent resident of such dwelling prior to

such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any 24 month period.

(c) For the purposes of subsection (b) of this Code section, a person shall be deemed to be in the business of selling or renting dwellings if:

(1) He has, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(2) He has, within the preceding 12 months, participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(d) Nothing contained in this Code section shall require that a dwelling be made available for rental or lease to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. (Code 1981, § 8-3-202, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 4; Ga. L. 1995, p. 1302, §§ 13, 14, 16.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1990, “renter’s” was substituted for “renter” in division (a)(7)(B)(i) and a comma was substituted for

a semicolon following “owner” in the introductory language of subparagraph (b)(1)(A).

#### RESEARCH REFERENCES

**ALR.** — Refusal to rent residential premises to persons with children as unlawful discrimination, 30 ALR4th 1187.

What constitutes illegal discrimination under state statutory prohibition against discrimination in housing accommodations on account of marital status, 33 ALR4th 964.

Validity, construction, and application of § 804(c) of Civil Rights Act of 1968 (Fair

Housing Act) (42 USCS § 3604(c)) prohibiting discriminatory notice, statement, or advertisement with respect to sale or rental of dwelling, 142 ALR Fed 1.

What constitutes reverse or majority race or national origin discrimination violative of federal constitution or statutes — nonemployment cases, 152 ALR Fed. 1.

### **8-3-203. Unlawful denial of or discrimination in membership or participation in service or organization relating to selling or renting dwellings.**

It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers’ organization, or other service, organization, or facility relating to the business of selling or renting dwellings or to discriminate against such person in the terms or conditions of such access, membership, or participation on

account of race, color, religion, sex, disability, familial status, or national origin. (Code 1981, § 8-3-203, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1995, p. 1302, § 13.)

**8-3-204. Discrimination in residential real estate related transactions; appraisals.**

(a) As used in this Code section, the term “residential real estate related transaction” means any of the following:

(1) The making or purchasing of loans or providing other financial assistance:

(A) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) Secured by residential real estate; or

(2) The selling, brokering, or appraising of residential real property.

(b) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate related transactions to discriminate against any person in making available such a transaction or in the terms or conditions of such a transaction because of race, color, religion, sex, handicap, familial status, or national origin.

(c) Nothing in this article shall be construed to prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status. (Code 1981, § 8-3-204, enacted by Ga. L. 1990, p. 1284, § 1.)

**8-3-205. Permissible limitations in sale, rental, or occupancy of dwellings by religious organizations or private clubs; housing for older persons.**

(a) Nothing in this article shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to such persons unless membership in such religion is restricted on account of race, color, sex, handicap, familial status, or national origin. Nothing in this article shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.



(b)(1) As used in this subsection, the term “housing for older persons” means housing:

(A) Provided under any state or federal program that the administrator determines is specifically designed and operated to assist elderly persons as defined in the state or federal program;

(B) Intended for, and solely occupied by, persons 62 years of age or older; or

(C) Intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the administrator shall develop regulations which require at least the following factors:

(i) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or, if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons;

(ii) That at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(iii) The publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(2) Nothing in this article limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. The provisions in this article regarding familial status shall not apply with respect to housing for older persons.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(A) Persons residing in such housing as of March 12, 1989, who do not meet the age requirements of subparagraph (B) or (C) of paragraph (1) of this subsection; provided, however, that new occupants of such housing meet the age requirements of subparagraph (B) or (C) of paragraph (1) of this subsection; or

(B) Unoccupied units; provided, however, that such units are reserved for occupancy by persons who meet the age requirements of subparagraph (B) or (C) of paragraph (1) of this subsection.

(4) Nothing in this article prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance. (Code

1981, § 8-3-205, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 5.)

**8-3-206. Powers and duties of administrator; housing and urban development programs of other agencies.**

(a) The authority and responsibility for administering this article shall be vested in the administrator of the Commission on Equal Opportunity.

(b) The administrator may delegate any of the administrator's functions, duties, and powers to employees of the Commission on Equal Opportunity or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this article. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred.

(c) All departments and agencies of state government shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this article and shall cooperate with the administrator to further such purposes.

(d) The administrator shall:

(1) Make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the state;

(2) Publish and disseminate reports, recommendations, and information derived from such studies;

(3) Cooperate with and render technical assistance to local and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) Administer the programs and activities relating to housing in a manner affirmatively to further the policies of this article;

(5) Adopt, promulgate, amend, and rescind, subject to the approval of the Governor after giving proper notice and hearing to all interested parties pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," such rules and regulations as may be necessary to carry out the provisions of this article;

(6) Cooperate with the United States Department of Housing and Urban Development created by Section 10(b) of the Department of Housing and Urban Development Act of 1965 (79 Stat. 667) and with other federal and local agencies in order to achieve the purposes of Title

VIII of the Civil Rights Act of 1968 (82 Stat. 81), as amended by the Fair Housing Amendments Act of 1988 (102 Stat. 1619), and to cooperate with other federal and local agencies in order to achieve the purposes of this article;

(7) Accept gifts, bequests, grants, or other public or private payments on behalf of the state and pay such moneys into the state treasury;

(8) Accept on behalf of the state reimbursement pursuant to Section 810 of the Civil Rights Act of 1968 (82 Stat. 85), as amended by the Fair Housing Amendments Act of 1988 (102 Stat. 1625), for services rendered to assist the United States Department of Housing and Urban Development; and

(9) Maintain with the United States Department of Housing and Urban Development status as a “certified agency” under Section 810 of the Civil Rights Act of 1968 (82 Stat. 85), as amended by the Fair Housing Act of 1988 (102 Stat. 1625), and as provided by the rules and regulations of said department.

(e) In any case where the federal Department of Housing and Urban Development has initiated an investigation or any action or proceedings against any person relative to any acts or omissions by such person which may be in violation of this article, the administrator shall have no authority to initiate or pursue against such person any investigation, civil action, or administrative enforcement covered by the provisions of this article with regard to the same acts or omissions or facts or circumstances to which the federal investigation or proceedings are applicable. (Code 1981, § 8-3-206, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 6.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1990, “provisions” was substituted for “provision” in paragraph (d)(5).

### **8-3-207. Educational and conciliatory activities; conferences; consultation as to extent of discrimination; reports.**

The administrator shall commence such educational and conciliatory activities as in the administrator’s judgment will further the purposes of this article. The administrator shall call conferences of persons in the housing industry and other interested parties to acquaint them with this article and the administrator’s suggested means of implementing this article and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. The administrator shall consult with state and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in this state, and whether and how enforcement programs might be utilized to combat such discrimination in connection with the administrator’s enforcement of this article. The administrator shall issue reports on such conferences and consultations as the adminis-



trator deems appropriate. (Code 1981, § 8-3-207, enacted by Ga. L. 1990, p. 1284, § 1.)

### **8-3-208. Discriminatory housing practice complaint procedures.**

(a) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the administrator alleging such discriminatory housing practice. The administrator, on the administrator's own initiative, may also file such a complaint. Complaints shall be in writing and under oath and shall contain such information and be in such form as the administrator requires. Upon the filing of a complaint under this subsection, the administrator shall serve notice upon the aggrieved person acknowledging the filing and advising the aggrieved person of procedural time limits and the choice of forums provided under this article.

(b) The administrator shall, not later than ten days after the filing of a complaint or the identification of an additional respondent under subsection (d) of this Code section, serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations under this article, together with a copy of the original complaint. Each respondent may file, not later than ten days after receipt of notice from the administrator, an answer to the complaint.

(c) Complaints and answers shall be verified and may be reasonably and fairly amended at any time.

(d) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of an investigation, may be joined as an additional or substitute respondent upon written notice to such person from the administrator as provided in subsection (b) of this Code section. In addition to meeting the requirements of subsection (b) of this Code section, the notice shall explain the basis for the administrator's belief that such person is properly joined as a respondent. (Code 1981, § 8-3-208, enacted by Ga. L. 1990, p. 1284, § 1.)

### **RESEARCH REFERENCES**

**ALR.** — Actions under Fair Housing Act harassment or creation of hostile environment, 144 ALR Fed. 595.  
(42 USCS § 3601 et seq.), based on sexual

### **8-3-209. Investigations; conciliation agreements; final report; breach of conciliation agreement; disclosure; action for temporary relief; transmittal of information.**

(a) The administrator shall investigate an alleged discriminatory housing practice and complete such investigation within 100 days after the filing of

a complaint unless it is impracticable to do so. If the administrator is unable to complete the investigation within 100 days after the filing of a complaint, the administrator shall notify the complainant and respondent of the reasons for the failure to complete the investigation.

(b) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the administrator, the administrator shall, to the extent feasible, engage in conciliation with respect to such complaint. A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant and shall be subject to approval by the administrator. A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the administrator determines that disclosure is not required to further the purposes of this article.

(c) At the end of each investigation under this Code section, the administrator shall prepare a final investigative report containing the following:

- (1) The names and dates of contacts with witnesses;
- (2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;
- (3) A summary description of other pertinent records;
- (4) A summary of witness statements; and
- (5) Answers to interrogatories.

A final report under this subsection may be amended if additional evidence is later discovered.

(d) Whenever the administrator has reasonable cause to believe that a respondent has breached a conciliation agreement, the administrator shall refer the matter to the Attorney General with a recommendation that a civil action be filed for the enforcement of such agreement.

(e)(1) Nothing said or done in the course of conciliation under this article may be made public or used as evidence in a subsequent proceeding under this article without the written consent of the parties concerned.

(2) Notwithstanding paragraph (1) of this subsection, the administrator shall make available to the aggrieved person and the respondent at any time upon request following completion of the administrator's investigation information derived from an investigation and any final investigative report relating to that investigation.

(f)(1) If the administrator concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the provisions of this article, the administrator may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this Code section. Upon such authorization, the Attorney General may commence and maintain such an action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with Chapter 11 of Title 9, the "Georgia Civil Practice Act." The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this Code section and Code Sections 8-3-213 and 8-3-214.

(2) Whenever the administrator has reason to believe that a basis may exist for the commencement of proceedings against any respondent under subsection (a) of Code Section 8-3-218 or for proceedings by any governmental licensing or supervisory authorities, the administrator shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be. (Code 1981, § 8-3-209, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1991, p. 94, § 8.)

#### **8-3-210. Procedure where local fair housing law applicable.**

Wherever a local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent, as certified by the Secretary of Housing and Urban Development as provided in Section 810 of the federal Fair Housing Amendments Act of 1988, to the rights and remedies provided under this article, the administrator shall notify the appropriate local agency of any complaint filed which appears to constitute a violation of the local fair housing law, and the administrator shall take no further action with respect to such complaint if the local law enforcement official has, within 30 days from the date the alleged offense was brought to his attention, commenced proceedings in the matter. In no event shall the administrator take further action unless the administrator certifies that, in the administrator's judgment under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action. (Code 1981, § 8-3-210, enacted by Ga. L. 1990, p. 1284, § 1.)

#### **8-3-211. Procedure on filing of discriminatory housing practice complaint.**

(a) The administrator shall, within 100 days after the filing of the complaint, determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so or unless the administrator has approved a conciliation agreement with respect to the complaint. If the



administrator is unable to make the determination within 100 days after the filing of the complaint, the administrator shall notify the complainant and respondent in writing of the reasons for not doing so.

(b)(1) If the administrator determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the administrator shall, except as provided in paragraph (3) of this subsection, immediately issue a charge on behalf of the aggrieved person.

(2) The charge shall consist of a short and plain statement of the facts upon which the administrator has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur, shall be based on the final investigative report, and need not be limited to the facts or grounds alleged in the complaint.

(3) If, after investigation, the administrator determines that the matter involves the legality of any state or local zoning or other land use law or ordinance, the administrator shall immediately refer the matter to the Attorney General for appropriate action instead of issuing such charge.

(c) If the administrator determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the administrator shall promptly dismiss the complaint. The administrator shall make public disclosure of each such dismissal. The administrator may not issue a charge under this Code section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an act of Congress or a state law, seeking relief with respect to that discriminatory housing practice. After the administrator issues a charge under this Code section, the administrator shall cause a copy thereof to be served on each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, and on each aggrieved person on whose behalf the complaint was filed. (Code 1981, § 8-3-211, enacted by Ga. L. 1990, p. 1284, § 1.)

### **8-3-212. Subpoenas and discovery; penalties for violations.**

(a) The administrator may issue subpoenas and order discovery in aid of investigations and hearings under this article. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in superior court in which the investigation is taking place.

(b) Witnesses summoned by a subpoena under this Code section shall be entitled to the same witness and mileage fees as witnesses in proceedings in superior courts. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by the party.

(c)(1) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other

evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (a) of this Code section, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,000.00.

(2) Any person who, with intent thereby to mislead another person in any proceeding under this article:

(A) Makes or causes to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to subpoena or other lawful order under subsection (a) of this Code section;

(B) Willfully neglects or fails to make or to cause to be made full, true, and correct entries in such reports, accounts, records, or other documents; or

(C) Willfully mutilates, alters, or by any other means falsifies any documentary evidence

shall be guilty of a misdemeanor and shall be fined not more than \$1,000.00. (Code 1981, § 8-3-212, enacted by Ga. L. 1990, p. 1284, § 1.)

**8-3-213. State action for enforcement; fines; damages; civil action by local agency; administrative proceeding.**

(a)(1) When a charge is filed to initiate an administrative complaint under Code Section 8-3-208, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in that charge decided in a civil action brought by the Attorney General on behalf of the aggrieved person as provided under paragraph (2) of this subsection in lieu of a hearing under subparagraph (e)(1)(A) or (e)(1)(B) of this Code section. The election must be made not later than 20 days after the receipt by the electing person of service under Code Section 8-3-211 or, in the case of the administrator, not later than 20 days after such service. The person making such election shall give notice of doing so to the administrator and to all other complainants and respondents to whom the charge relates.

(2) If the administrator has been unable to obtain voluntary compliance or as a result of an investigation under Code Section 8-3-209 finds that there is reasonable cause to believe that a discriminatory housing practice has occurred, at the recommendation of the administrator, the Attorney General, after reviewing the administrator's findings and determining that such findings are well grounded in fact and warranted by law, shall bring an action in the name of the state on behalf of the aggrieved person to enforce the provisions of this article.

(3) If an election is made under paragraph (1) or (2) of this subsection, the administrator shall authorize and, not later than 30 days

after the election is made, the Attorney General, after reviewing the administrator's charge and determining that such charge is well grounded in fact and warranted by law, shall commence a civil action on behalf of the aggrieved person seeking relief under this Code section in a superior court.

(b) Whenever an action filed in court pursuant to paragraph (2) of subsection (a) of this Code section or Code Section 8-3-217 or 8-3-218 comes to trial, the administrator shall immediately terminate all efforts to obtain voluntary compliance.

(c)(1) The court may impose the following fines if the respondent has been adjudged to have committed a discriminatory housing practice:

(A) Up to \$10,000.00, if the respondent has not previously been found guilty of committing a discriminatory housing practice;

(B) Up to \$25,000.00, if the respondent has been found guilty of committing one prior discriminatory housing practice within the preceding five years; or

(C) Up to \$50,000.00, if the respondent has been found guilty of committing two or more discriminatory housing practices within the preceding seven years.

(2) The court may award reasonable attorney's fees and costs to the administrator or aggrieved person in any action in which the administrator or aggrieved person prevails or to the respondent in any action in which the respondent prevails only upon a showing that the action is frivolous, unreasonable, or without foundation.

(3) In addition to the remedies set forth in paragraphs (1) and (2) of this subsection, the court may award actual damages and punitive damages to the aggrieved person. Punitive damages awarded under this subsection may be awarded only when the evidence shows that the respondent's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences or to the rights of the aggrieved party.

(d) Any local agency certified as substantially equivalent by the secretary of housing and urban development pursuant to Section 810 of the federal Fair Housing Amendments Act of 1988 may institute a civil action in any appropriate court, including superior court, if it is unable to obtain voluntary compliance with the local fair housing law. The agency need not have petitioned for an administrative hearing or exhausted its administrative remedies prior to bringing a civil action. The court may impose fines as provided in the local fair housing law.

(e)(1) If the administrator is unable to obtain voluntary compliance with this article and has reasonable cause to believe that a discriminatory housing practice has occurred:



(A) The administrator may institute an administrative proceeding under Chapter 13 of Title 50; or

(B) The person aggrieved may request administrative relief under Chapter 13 of Title 50 within 20 days after receipt of service of a charge filed under Code Section 8-3-211.

When an administrative hearing is to be instituted under subparagraph (A) or (B) of this paragraph, the administrator shall refer the case to the board of commissioners to conduct a hearing in accordance with this article. The board of commissioners shall designate a panel of three of its members, one of which must be an attorney licensed to practice law in the state, and that tribunal shall have all the power and authority granted to agencies in conducting hearings and rendering final orders under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," including, but not limited to, subpoena power.

(2) Not more than seven working days after the case has been referred to the board of commissioners, the administrator shall serve on the respondent and the person aggrieved or the aggrieved person's attorney by registered or certified mail or statutory overnight delivery a written notice together with a copy of the complaint requiring the respondent to answer the charges contained therein at a hearing before the board of commissioners at a time and place specified in the notice. Such notice must contain all general and specific charges against the respondent.

(3) The respondent shall serve an answer with the board of commissioners by registered or certified mail or statutory overnight delivery not more than 20 working days after receipt of the notice of hearing, which 20 working days may be extended by the board of commissioners in the board of commissioners' discretion for an additional time not to exceed ten working days. The respondent's answer must show by a certificate of service that the respondent has served a copy of the answer on the complainant or the complainant's attorney at the last known address of the complainant or the complainant's attorney where the complainant is represented by an attorney. Upon leave of the board of commissioners, the complainant may amend the charges contained in the notice of hearing. The respondent may amend an answer at any time prior to the hearing or, upon leave of the board of commissioners, may amend thereafter. No final order shall be issued unless the respondent has had the opportunity of a hearing on the charges contained in the notice of hearing or amendment on which the final order is based. If the respondent fails to answer the complaint, the board of commissioners may enter the respondent's default. Unless the default is set aside for good cause shown, the hearing may proceed under the available evidence.

(4) At any time after a notice of hearing is served upon a respondent, discovery shall be authorized in the same manner and fashion as

discovery is permitted under Code Sections 9-11-26 through 9-11-37. Any order contemplated in Code Sections 9-11-26 through 9-11-37 may be issued by the board of commissioners. Judicial enforcement of any such order may be obtained by the complainant or respondent in the same manner as is provided for the enforcement of final orders in Code Section 45-19-40.

(5) A respondent who has filed an answer or whose default in answering has been set aside for good cause shown may appear at the hearing, may examine and cross-examine witnesses and the complainant, and may offer evidence. The complainant and, at the discretion of the board of commissioners, any other person may intervene, examine and cross-examine witnesses, and present evidence.

(6) Efforts at conference, conciliation, and persuasion shall not be received in evidence.

(7) Testimony taken at the hearing shall be under oath and shall be stenographically or otherwise recorded by a certified court reporter. After the hearing, the board of commissioners at the board of commissioners' discretion may take further evidence or hear arguments upon notice to all parties with an opportunity to be present.

(8) Except as otherwise specifically provided for in this article, all proceedings of the board of commissioners shall be conducted as provided for with respect to contested cases in Chapter 13 of Title 50. (Code 1981, § 8-3-213, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 7; Ga. L. 2000, p. 1589, § 3.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1992, "secretary of housing and urban development" was substituted for "Secretary of Housing and Urban Development" in subsection (d), and "commissioners'" was substituted for "commissioner's" in paragraphs (e)(3) and (e)(7).

**Editor's notes.** — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

#### RESEARCH REFERENCES

**ALR.** — Actions under Fair Housing Act (42 USCS § 3601 et seq.), based on sexual harassment or creation of hostile environment, 144 ALR Fed. 595.

### 8-3-214. Orders of board of commissioners.

(a) If the board of commissioners determines that the respondent has not engaged in a discriminatory housing practice, the board of commissioners shall state the board of commissioners' findings of fact and conclusions of law and shall issue a final order within 30 days after the

hearing unless, for good cause shown, such time is extended by the board of commissioners, dismissing the complaint.

(b) If the board of commissioners determines that the respondent has engaged in a discriminatory housing practice, the board of commissioners shall state the board of commissioners' findings of fact and conclusions of law and shall issue a final order within 30 days after the hearing unless, for good cause shown, such time is extended by the board of commissioners, granting such relief as may be appropriate, which may include actual compensatory damages suffered by the aggrieved person and injunctive or other equitable relief and reasonable attorney's fees and costs. A prevailing respondent may be awarded reasonable attorney's fees and costs only upon a showing that the proceeding is frivolous, unreasonable, or without foundation. Attorney's fees may be awarded against a complainant or an aggrieved party if such party joined in the proceeding on its own as an intervening party.

(c) No order of the board of commissioners shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge filed under this article. In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to licensing or regulation by a governmental agency, the administrator shall, not later than 30 days after the date of the issuance of such order, or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon review, send copies of the findings of fact, conclusions of law, and the order to that governmental agency and recommend to that governmental agency appropriate disciplinary action. In the case of an order against a respondent against whom another order was issued within the preceding five years under this Code section, the administrator shall send a copy of each such order to the Attorney General.

(d) If the board of commissioners finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, the board of commissioners shall enter an order dismissing the charge. The administrator shall make public disclosure of each such dismissal. (Code 1981, § 8-3-214, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 8; Ga. L. 1993, p. 91, § 8.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1990, "attorney's" was substituted for "attorney" in the first sentence of subsection (b).

Pursuant to Code Section 28-9-5, in 1992, in both subsections (a) and (b), "commis-

sioners'" was substituted for "commissioner's" and a comma was deleted following "order", and "a" was deleted preceding "licensing" in the second sentence of subsection (c).



**8-3-215. Appeal from order of board of commissioners; attorney's fees and costs.**

(a) Any party to a hearing before the board of commissioners may appeal any adverse final order of the board of commissioners by filing a petition for review in the superior court in the county in which the alleged unlawful practice occurred or in the superior court of the residence of the respondent within 30 days of the issuance of the final order. The board of commissioners shall not be a named party. The administrator must be served with a copy of the petition for review. Within 30 days after the petition is served on the administrator, the administrator shall forward to the court a certified copy of the record of the hearing before the board of commissioners, including the transcript of the hearing before the board of commissioners and all evidence, administrative pleadings, and orders, or the entire record if no hearing has been held. For good cause shown, the court may require or permit subsequent corrections or additions to the record. All appeals for judicial review shall be in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; provided, however, that if any provisions of Chapter 13 of Title 50 conflict with any provision of this article, this article controls.

(b) The court shall not substitute its judgment for that of the board of commissioners as to the weight of the evidence on questions of fact. The court may affirm a final order of the board of commissioners or remand the case for further proceedings. The court may reverse or modify the final order if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedures;
- (4) Affected by other error of law;

(5) Not supported by substantial evidence, which shall mean that the record does not contain such relevant evidence as a reasonable mind might accept as adequate to support said findings, inferences, conclusions, or decisions; or

(6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) If, upon judicial review of any order of the board of commissioners or in a proceeding in which a complainant seeks enforcement of a conciliation agreement, the court rules in favor of the complainant, then the court may in its discretion render an award of reasonable attorney's fees and costs of litigation in the superior court to the complainant. A prevailing respondent may be awarded court costs and reasonable attorney's fees only upon a

showing that the action is frivolous, unreasonable, or without foundation. (Code 1981, § 8-3-215, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 9.)

**8-3-216. Filing order of administrator or board of commissioners in superior court and judgment thereon.**

Any person affected by a final order of the administrator or the board of commissioners may file in the superior court of the county of the residence of the respondent a certified copy of a final order of the administrator or of the board of commissioners unappealed from or of a final order of the board of commissioners affirmed upon appeal, whereupon said court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by the court. (Code 1981, § 8-3-216, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 10.)

**8-3-217. Civil actions by aggrieved persons.**

(a)(1) An aggrieved person may commence a civil action in an appropriate superior court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered into under this article, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach of a conciliation agreement.

(2) The computation of such two-year period shall not include any time during which an administrative proceeding under this article was pending with respect to a complaint or charge under this article based upon such discriminatory housing practice. This paragraph does not apply to actions arising from a breach of a conciliation agreement.

(3) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under Code Section 8-3-208 and without regard to the status of any such complaint, but if the administrator has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such conciliation agreement.

(4) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the administrator if the board of commissioners has commenced a hearing on the record under this article with respect to such charge.

(b)(1) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order and may award to the plaintiff reasonable attorney's fees, court costs, actual damages, and punitive damages not to exceed penalties permitted by the federal Fair Housing Amendments Act of 1988, 42 U.S.C. Section 3601, et seq., as amended. Punitive damages may be awarded under this article only when the evidence shows that the respondent's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences or to the rights of the aggrieved party.

(2) Where it is proved that the aggrieved party took an active part in the initiation, continuation, or procurement of civil proceedings against a respondent, the aggrieved party may be liable for abusive litigation as provided for in Article 5 of Chapter 7 of Title 51.

(c) Relief granted under this Code section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, lessee, or tenant without actual notice of a complaint filed with the administrator or civil action under this Code section.

(d) Upon timely application, the Attorney General may intervene in such civil action if the Attorney General certifies that the case is of general public importance. Upon such intervention, the Attorney General may obtain such relief as would be available to the Attorney General under Code Section 8-3-218 in a civil action to which such Code section applies. (Code 1981, § 8-3-217, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 11.)

#### RESEARCH REFERENCES

**ALR.** — Actions under Fair Housing Act (42 USCS § 3601 et seq.), based on sexual harassment or creation of hostile environment, 144 ALR Fed. 595.

Award of attorney's fees to prevailing parties in actions under Fair Housing Act, 42 USCA § 3613(c)(2), 159 ALR Fed. 279.

### 8-3-218. Civil actions by Attorney General.

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this article or that any group of persons has been denied any of the rights granted by this article and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate superior court.



(b)(1) The Attorney General may commence a civil action in any appropriate superior court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the administrator under paragraph (3) of subsection (b) of Code Section 8-3-211. A civil action brought under this paragraph may be commenced not later than 180 days from the date a reasonable cause determination is issued by the administrator.

(2) The Attorney General may commence a civil action in any appropriate superior court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the administrator under subsection (d) of Code Section 8-3-209. A civil action brought under this paragraph may be commenced not later than the expiration of 90 days after the referral of the alleged breach under subsection (d) of Code Section 8-3-209.

(c) The Attorney General, on behalf of the administrator or other party at whose request a subpoena is issued under this article, may enforce such subpoena in appropriate proceedings in the superior court for the county in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(d)(1) In a civil action brought under subsection (a) or (b) of this Code section, the court:

(A) May award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the persons responsible for a violation of this article as is necessary to assure the full enjoyment of the rights granted by this article;

(B) May award such other relief as the court deems appropriate, including actual damages to persons aggrieved; and

(C) May, to vindicate the public interest, assess a civil penalty against the respondent:

(i) In an amount not exceeding \$50,000.00 for a first violation; or

(ii) In an amount not exceeding \$100,000.00 for any subsequent violation.

(2) In a civil action brought under subsection (a) or (b) of this Code section, the court in its discretion may allow the prevailing party reasonable attorney's fees and costs; provided, however, that a respondent may be awarded reasonable attorney's fees and court costs only upon a showing that the action is frivolous, unreasonable, or without foundation.

(e) Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) of this Code section which involves an alleged discriminatory housing practice

with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under Code Section 8-3-217. (Code 1981, § 8-3-218, enacted by Ga. L. 1990, p. 1284, § 1.)

#### **8-3-219. Expediting of actions under Code Section 8-3-217 or 8-3-218.**

Any court in which a proceeding is instituted under Code Section 8-3-217 or 8-3-218 shall assign the case for hearing at the earliest practicable date and cause the case to be expedited. (Code 1981, § 8-3-219, enacted by Ga. L. 1990, p. 1284, § 1.)

#### **8-3-220. Adoption of provisions in local ordinance.**

A political subdivision of this state may adopt verbatim the laws against discriminatory housing practices cited in Code Section 8-3-202, 8-3-203, 8-3-204, 8-3-205, or 8-3-222 of this article as a local ordinance but may not expand or reduce the rights granted by this article. (Code 1981, § 8-3-220, enacted by Ga. L. 1990, p. 1284, § 1.)

#### **8-3-221. Cooperation with federal and local agencies.**

The administrator may cooperate with federal and local agencies charged with the administration of federal and local fair housing laws or ordinances and, with the consent of such agencies, utilize the services of such agencies and their employees. In furtherance of such cooperative efforts, the administrator may enter into written agreements with such federal or local agencies. All agreements and terminations thereof shall be published in the Official Compilation of the Rules and Regulations of the State of Georgia. (Code 1981, § 8-3-221, enacted by Ga. L. 1990, p. 1284, § 1.)

#### **8-3-222. Coercion, intimidation, threats, or interference.**

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of such person's having exercised or enjoyed, or on account of such person's having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this article. (Code 1981, § 8-3-222, enacted by Ga. L. 1990, p. 1284, § 1.)

#### **8-3-223. Compliance with federal law.**

Compliance with the provisions of the Fair Housing Amendments Act of 1988 (Pub. L. No. 100-430) shall be deemed compliance with the provisions of paragraph (7) of Code Section 8-3-201 and subparagraph (a)(7)(B) of

Code Section 8-3-202. In addition, should any provision of this article relating to the treatment of persons with disabilities be in conflict with any provision of the Fair Housing Amendments Act of 1988, then the provisions of the latter shall prevail. (Code 1981, § 8-3-223, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1995, p. 1302, § 3.)

## ARTICLE 5

### HOUSING TRUST FUND FOR THE HOMELESS

**Administrative rules and regulations.** — Organization and definitions, Official Compilation of Rules and Regulations of State of Georgia, State Housing Trust Fund for the Homeless, Chapter 286-1.

Application and financial assistance, Official Compilation of Rules and Regulations of State of Georgia, State Housing Trust Fund for the Homeless, Chapter 286-2.

#### 8-3-300. Short title.

This article shall be known and cited as the “State Housing Trust Fund for the Homeless Act.” (Code 1981, § 8-3-300, enacted by Ga. L. 1988, p. 717, § 1.)

#### 8-3-301. Definitions.

As used in this article, the term:

(1) “Commission” means the State Housing Trust Fund for the Homeless Commission created in Code Section 8-3-306.

(2) “Homeless” means persons and families who have no access to or can reasonably be expected not to have access to either traditional or permanent housing which can be considered safe, sanitary, decent, and affordable.

(3) “Low-income persons” means persons or families who lack the income necessary, as determined solely by the commission, to enable them, without financial assistance, to secure safe, sanitary, decent, and affordable housing.

(4) “Member” means a member appointed to serve on the State Housing Trust Fund for the Homeless Commission.

(5) “Qualified sponsor” means a nonprofit, for profit, or governmental sponsor of a residential housing project.

(6) “Residential housing project” means a program designed to enhance residential housing opportunities for low-income persons. Such projects include, but are not limited to, financing in whole or in part the acquisition, rehabilitation, improvement, or construction of residential rental housing and interest rate or down payment assistance programs designed to enhance home ownership opportunities.



(7) "Trust fund" means the State Housing Trust Fund for the Homeless created in Code Section 8-3-302. (Code 1981, § 8-3-301, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1990, p. 8, § 8; Ga. L. 1991, p. 1653, § 2-1; Ga. L. 1996, p. 872, § 1.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1989, a comma was inserted following "decent" near the end of paragraph (8) (now paragraph (12)).

Pursuant to Code Section 28-9-5, in 1993, "low-income" was substituted for "low income" in paragraph (6).

### **8-3-302. Fund created.**

The State Housing Trust Fund for the Homeless is created as a separate fund in the state treasury. The fund shall be expended only as provided in this article. (Code 1981, § 8-3-302, enacted by Ga. L. 1988, p. 717, § 1.)

### **8-3-303. Amounts credited to trust fund.**

The director of the Office of Treasury and Fiscal Services shall credit to the trust fund all amounts appropriated or otherwise donated to such trust fund. All funds appropriated to or otherwise paid or credited to the trust fund shall be presumptively concluded to have been committed to the purpose for which they have been appropriated or paid and shall not lapse. (Code 1981, § 8-3-303, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1993, p. 1402, § 18.)

### **8-3-304. Investments.**

The director of the Office of Treasury and Fiscal Services shall invest trust fund money in the same manner in which state funds are invested as authorized by the State Depository Board pursuant to Article 3 of Chapter 17 of Title 50. (Code 1981, § 8-3-304, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1993, p. 1402, § 18.)

### **8-3-305. Payments from fund.**

The Office of Treasury and Fiscal Services shall be authorized to draw a warrant or warrants upon the trust fund upon receipt of an order for payment of the State Housing Trust Fund for the Homeless Commission, which order for payment has been approved by the Governor. (Code 1981, § 8-3-305, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1993, p. 1402, § 18.)

### **8-3-306. Commission established; members; officers; support personnel; appropriations and budget through Department of Community Affairs.**

(a) There is established the State Housing Trust Fund for the Homeless Commission which shall consist of nine members. Two of the nine members

shall be the commissioner of community affairs, or his or her designee, and either the chairperson of the Board of Community Affairs or a member of the Board of Community Affairs designated by the chairperson. The Governor shall appoint the remaining seven public members. The public members shall be knowledgeable in the area of housing and, to the extent practicable, shall represent diverse housing concerns. Public members shall serve for a term of four years except that initial appointments shall be staggered as follows: three of the appointees shall serve an initial term of four years and four of the appointees shall serve an initial term of two years. Public members shall continue in office until their successors have been appointed and qualified. In the event of a vacancy in the office of a public member by death, resignation, or otherwise, the Governor shall appoint a successor to serve the balance of the unexpired term. Membership on the commission does not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership.

(b) The commission shall elect a chairperson who shall serve in that position for a term of two years. The commission shall elect such other officers and appoint committees as it deems appropriate.

(c) The commission shall hire no staff but shall contract with the Department of Community Affairs for professional, technical, and clerical support from the Department of Community Affairs as required. In the event that the Department of Community Affairs is unable to provide the professional, technical, or clerical services required, the commission may hire outside consultants on a specified project basis.

(d) Any and all appropriations made to the trust fund pursuant to the general appropriations Act or the supplemental appropriations Act shall be directed through the Department of Community Affairs. The commission shall submit its budget to and through the Department of Community Affairs. (Code 1981, § 8-3-306, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1991, p. 1653, § 2-3; Ga. L. 1993, p. 311, § 1; Ga. L. 1996, p. 872, § 2.)

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1988, a comma was deleted following “area of housing” in the third sentence of subsection (a).

Pursuant to Code Section 28-9-5, in 1996, “Community Affairs” was substituted for “the Department of Community Affairs” and “board of Community Affairs” was substituted for “board of directors of the De-

partment of Community Affairs” in two places in subsection (a).

Pursuant to Code Section 28-9-5, in 1996, “commissioner of community affairs” was substituted for “commissioner of Community Affairs” and “Board of Community Affairs” was substituted for “board of Community Affairs” in two places in subsection (a).

#### OPINIONS OF THE ATTORNEY GENERAL

**Conflict of interest.** — The Housing Trust Fund for the Homeless Commission’s policy of having a member disclose the member’s involvement and abstain from voting when

the member is involved with an organization that applies to the Commission for funding is insufficient to relieve the conflict of interest. 1992 Op. Att’y Gen. No. 92-15.

**8-3-307. Expense allowance and travel reimbursement for members of commission.**

Members of the commission shall serve without compensation but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member is in physical attendance at a commission meeting, plus either reimbursement for actual transportation costs while traveling by public carrier or the same mileage allowance for use of a personal car in connection with such attendance as members of the General Assembly receive. Notwithstanding the foregoing, no member shall receive said expense allowance or travel reimbursement if said member is entitled to receive an expense allowance or travel reimbursement or salary for performance of duties on some other state board, commission, or entity, by whatever name called, for work performed on that day in the same location. Expense allowances and travel reimbursement shall be paid from moneys appropriated or otherwise available to the trust fund. (Code 1981, § 8-3-307, enacted by Ga. L. 1988, p. 717, § 1.)

**8-3-308. Duties of commission.**

The commission shall:

- (1) Meet at such times and places as it shall determine necessary or convenient to perform its duties;
- (2) Maintain minutes of its meetings;
- (3) Adopt rules and regulations for the transaction of its business;
- (4) Accept applications for disbursements of available moneys from the trust fund for residential housing projects; and
- (5) Maintain or cause to be maintained records of all expenditures of the commission, all funds received, and all disbursements made. (Code 1981, § 8-3-308, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1993, p. 91, § 8; Ga. L. 1996, p. 872, § 3.)

**8-3-309. Acceptance of federal funds; disposition.**

The commission may accept federal funds granted by Congress or executive order for the purposes of residential housing projects and gifts, grants, and donations from individuals, private organizations, or foundations. All funds received in this manner shall be transmitted to the director of the Office of Treasury and Fiscal Services for deposit in the trust fund to be disbursed as other moneys in the trust fund. (Code 1981, § 8-3-309, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1993, p. 1402, § 18.)

**8-3-310. Authorized disbursement.**

(a) The commission may authorize the disbursement of available money from the trust fund for residential housing projects sponsored by a qualified



sponsor. The commission may consult, as appropriate, with persons with varied and diverse interests in housing in order to acquaint them with the trust fund and to solicit information relating to housing needs, residential housing projects, and criteria for selection of residential housing projects. The criteria for making such disbursement decisions shall include, but not be limited to, the following:

- (1) The number of persons assisted;
- (2) The leveraging of money or in-kind services by a qualified sponsor;
- (3) The geographic distribution of residential housing projects;
- (4) The availability of other forms of assistance; and
- (5) Any and all other factors bearing upon the advisability and necessity of the residential housing project.

(b) Funds may also be disbursed from the trust fund to pay expenses of the commission, to pay any and all operating expenses, and to pay for professional, technical, and clerical services provided the commission by the Department of Community Affairs or by other outside sources. (Code 1981, § 8-3-310, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1991, p. 1653, § 2-3; Ga. L. 1996, p. 872, § 4.)

**8-3-311. Powers of commission to hold title, foreclose, commence action to protect or enforce rights, and exercise other rights for its benefit or protection.**

(a) The commission shall have the power to hold title to any residential housing project financed by it, but it shall not be required to do so.

(b) The commission shall have the power to foreclose on any mortgage or security interest in default and to commence any action to protect or enforce any right conferred upon it by any law, mortgage, security agreement, deed of trust, deed to secure debt, contract, or other agreement; to bid for and purchase property which was the subject of such mortgage or security interest at any foreclosure or at any other sale; to accept a deed in lieu of foreclosure; to acquire or take possession of such property; and to exercise any and all rights as provided by law or contract for the benefit or protection of the commission. (Code 1981, § 8-3-311, enacted by Ga. L. 1993, p. 311, § 2.)

## ARTICLE 6

### DOCUMENTATION BY HOME INSPECTORS

**8-3-330. “Home inspector” defined.**

As used in this article, the term “home inspector” means any person, except an employee of a county, municipality, or political subdivision while

engaged in the performance of the duties of his or her employment, who, for consideration, inspects and reports on the condition of any home or single-family dwelling or the grounds, roof, exterior surface, garage or carport, structure, attic, basement or crawl space, electrical system, heating system, air-conditioning system, plumbing, on-site sewerage disposal, pool or hot tub, fireplace, kitchen, appliances, or any combination thereof for a prospective purchaser or seller. (Code 1981, § 8-3-330, enacted by Ga. L. 1994, p. 471, § 1.)

### **8-3-331. Documentation required.**

Every home inspector shall provide to the person on whose behalf a home or single-family dwelling is being inspected a written document specifying:

(1) The scope of the inspection, including those structural elements, systems, and subsystems to be inspected;

(2) That the inspection is a visual inspection; and

(3) That the home inspector will notify in writing the person on whose behalf such inspection is being made of any defects noted during the inspection, along with any recommendation that certain experts be retained to determine the extent and corrective action necessary for such defects. (Code 1981, § 8-3-331, enacted by Ga. L. 1994, p. 471, § 1.)

### **8-3-331.1. Licensing authority of political subdivision.**

Nothing in this article shall preempt a political subdivision from prescribing licensing requirements for home inspectors. (Code 1981, § 8-3-331.1, enacted by Ga. L. 1997, p. 550, § 2.)

**Editor's notes.** — Ga. L. 1997, p. 550, § 3, not codified by the General Assembly, provides that no county or municipality shall be required to implement the requirements of

that Act until such time as the county or municipality has consumed all building permit forms on hand as of January 1, 1998.

### **8-3-332. Criminal penalty.**

Any person violating any of the provisions of this article shall be guilty of a misdemeanor. (Code 1981, § 8-3-332, enacted by Ga. L. 1994, p. 471, § 1.)

## CHAPTER 4

## CLEARANCE AND REHABILITATION OF BLIGHTED AREAS

Sec.		Sec.	
8-4-1.	Short title.	8-4-8.	Acquisition and development by authorities of lands not within blighted areas for redevelopment projects; findings required prior to acquisition; projects involving more than one city.
8-4-2.	Legislative findings and declaration of necessity.	8-4-9.	Cooperation by state public bodies in aid of redevelopment projects.
8-4-3.	Definitions.	8-4-10.	Financial aid from federal government; security for aid.
8-4-4.	Power of authorities to prepare redevelopment plans and to undertake redevelopment projects; scope of authorities' powers, privileges, and immunities.	8-4-11.	Bonds and other obligations as legal investments and security.
8-4-5.	Approval of redevelopment projects by cities.	8-4-12.	Investment in projects; acquisition, development, and sale of lands and improvements in project areas.
8-4-6.	Power of authorities to make property available for use by private enterprise or public agencies; manner of valuation of property; obligations of purchasers and lessees.		
8-4-7.	Taxation of leased property.		

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**Cross references.** — Urban redevelopment plans generally, Ch. 61, T. 36. Development authorities of counties and municipalities, Ch. 62, T. 36.

**8-4-1. Short title.**

This chapter may be referred to as the "Redevelopment Law." (Ga. L. 1946, p. 157, § 1.)

**Law reviews.** — For survey of developments in Georgia real property law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 219 (1981).

**8-4-2. Legislative findings and declaration of necessity.**

It is found and declared:

(1) That there exist in many communities within this state blighted areas, as defined in Code Section 8-4-3, or areas in the process of becoming blighted;

(2) That such areas impair economic values and tax revenues; that such areas cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the residents of the state; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities;



(3) That the clearance, replanning, and preparation for rebuilding of these areas and the prevention of the reduction of blight and its causes are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern;

(4) That there are also certain areas where the condition of the title, the diverse ownership of the land to be assembled, the street or lot layouts, or other conditions prevent a proper development of the land; that it is in the public interest that such areas, as well as blighted areas, be acquired by eminent domain and made available for sound and wholesome development in accordance with a redevelopment plan; and that the exercise of the power of eminent domain and the financing of the acquisition and preparation of land by a public agency for such redevelopment is likewise a public use and purpose;

(5) That redevelopment activities will stimulate residential construction which is closely correlated with general economic activity; and that such undertakings authorized by this chapter will aid the production of better housing and more desirable neighborhood and community development at lower costs and will make possible a more stable and larger volume of residential construction, which will assist materially in achieving and maintaining full employment;

(6) That there exists an emergency housing shortage of decent, safe, and sanitary dwellings for families of low income; and

(7) That it is in the public interest that advance preparation for such projects and activities be made now; and that the necessity in the public interest for the provisions enacted by this chapter is declared as a matter of legislative determination. (Ga. L. 1946, p. 157, § 2.)

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, §§ 16, 19.

#### 8-4-3. Definitions.

As used in this chapter, the term:

(1) “Blighted areas” means:

(A) Areas in which there is a predominance of buildings or improvements, or which are predominantly residential in character, and which, by reason of:

(i) Dilapidation, deterioration, age, or obsolescence;

(ii) Inadequate provision for ventilation, light, air, sanitation, or open spaces;

- (iii) High density of population and overcrowding;
  - (iv) The existence of conditions which endanger life or property by fire and other causes; or
  - (v) Any combination of such factors,
- are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime and are detrimental to the public health, safety, morals, or welfare; and

(B) Areas which, by reason of:

- (i) The predominance of defective or inadequate street layout;
- (ii) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- (iii) Insanitary or unsafe conditions;
- (iv) Deterioration of site improvements;
- (v) Diversity of ownership;
- (vi) Tax or special assessment delinquency exceeding the fair value of the land;
- (vii) Defective or unusual conditions of title;
- (viii) Improper subdivision or obsolete platting;
- (ix) The existence of conditions which endanger life or property by fire or other causes; or
- (x) Any combination of such factors,

substantially impair or arrest the sound growth of the community, retard the provision of housing accommodations, or constitute an economic or social liability and are a menace to the public health, safety, morals, or welfare in their present condition and use.

(2) "Redevelopment plan" means a plan, other than a preliminary or tentative plan, for the acquisition, clearance, reconstruction, rehabilitation, or future use of a redevelopment project area. Such plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements and to indicate the proposed land uses and building requirements in the redevelopment project area.

(3) "Redevelopment project" means:

(A) Any work or undertaking to acquire blighted areas or portions thereof, including lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance, develop-

ment, or redevelopment of such blighted areas or to the prevention of the spread or recurrence of slum conditions or conditions of blight;

(B) Any work or undertaking to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

(C) Any work or undertaking to sell, lease, or otherwise make available land in such areas for residential, recreational, commercial, industrial, or other use, or for public use or to retain such land for public use, in accordance with the redevelopment plan; and

(D) The preparation of a redevelopment plan; the planning, survey, and other work incident to a redevelopment project; and the preparation of all plans and arrangements for carrying out a redevelopment project. (Ga. L. 1946, p. 157, § 3; Ga. L. 1951, p. 683, § 1.)

#### JUDICIAL DECISIONS

**Blighted areas and redevelopment project does not include forest land.** — The terms “blighted areas” and “redevelopment project” as defined in Ga. L. 1951, p. 683, § 1 (see O.C.G.A. § 8-4-3) cannot be construed to include the property of condemnee where such property is only

forest land, and to construe such terms as applying to the property is contrary to Ga. Const. 1945, Art. XVI (see Ga. Const. 1983, Art. IX, Sec. II, Para. VII). *Howard v. Housing Auth.*, 220 Ga. 640, 140 S.E.2d 880 (1965).

#### RESEARCH REFERENCES

**Am. Jur. 2d.** — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 20.

#### 8-4-4. Power of authorities to prepare redevelopment plans and to undertake redevelopment projects; scope of authorities' powers, privileges, and immunities.

Any housing authority established pursuant to Article 1 of Chapter 3 of this title, the “Housing Authorities Law,” is authorized to prepare or cause to be prepared redevelopment plans and to undertake redevelopment projects within its area of operation, in accordance with this chapter. In undertaking such redevelopment projects, a housing authority shall have all the rights, powers, privileges, and immunities that such authority has under Article 1 of Chapter 3 of this title, the “Housing Authorities Law,” and any other provision of law relating to slum clearance and housing projects for persons of low income, including, without limiting the generality of the foregoing, the power to make and execute contracts, to issue bonds and other obligations and give security therefor, to acquire real property by eminent domain or purchase, and to do any and all things necessary to



carry out projects in the same manner as though all of the provisions of law applicable to slum clearance and housing projects were applicable to redevelopment projects undertaken under this chapter, provided that nothing contained in Code Sections 8-3-11 and 8-3-12 shall be construed as limiting the power of an authority, in the event of a default by a purchaser or lessee of land in a redevelopment plan, to acquire property and operate it free from the restrictions contained in said Code sections. (Ga. L. 1946, p. 157, § 4; Ga. L. 1951, p. 683, § 2.)

**Cross references.** — Property-acquisition policies relating to federal-aid public works projects, § 22-49 et seq.

#### **8-4-5. Approval of redevelopment projects by cities.**

An authority shall not initiate any redevelopment project under this chapter until the governing body, planning agency, or other legally designated and empowered public agency of each city in which any of the area to be covered by the project is situated has approved the redevelopment plan for the redevelopment project area. (Ga. L. 1946, p. 157, § 5; Ga. L. 1951, p. 683, § 3.)

#### **8-4-6. Power of authorities to make property available for use by private enterprise or public agencies; manner of valuation of property; obligations of purchasers and lessees.**

(a) An authority may make land in a redevelopment project available for use by private enterprise or public agencies in accordance with the redevelopment plan. Such land may be made available at its fair value, which represents the value, whether expressed in terms of rental or capital price, at which the authority determines such land should be made available in order that it may be developed or redeveloped for the purpose specified in such plan.

(b) To assure that land acquired in a redevelopment project is used in accordance with the redevelopment plan, an authority, upon the sale or lease of such land, shall obligate purchasers or lessees:

(1) To use the land for the purpose designated in the redevelopment plan;

(2) To begin the building of improvements within such period of time as the authority fixes as reasonable; and

(3) To comply with such other conditions as are necessary to carry out the purposes of this chapter.

Any such obligations by the purchaser shall be covenants and conditions running with the land where the authority so stipulates. (Ga. L. 1946, p. 157, § 7.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, §§ 23, 24.

**8-4-7. Taxation of leased property.**

Any property which the authority leases to private corporations, individuals, or partnerships for development under a redevelopment plan shall have the same tax status as if such leased property were owned by such private corporations, individuals, or partnerships. (Ga. L. 1946, p. 157, § 8.)

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 29.

**8-4-8. Acquisition and development by authorities of lands not within blighted areas for redevelopment projects; findings required prior to acquisition; projects involving more than one city.**

(a) Upon a determination, by resolution, of the governing body of the city in which such land is located that the acquisition and development of undeveloped vacant land, not within a blighted area, is essential to the proper clearance or redevelopment of blighted areas or a necessary part of the general slum clearance program of the city, the acquisition, planning, preparation for development, or disposal of such land shall constitute a redevelopment project which may be undertaken by the authority in the manner provided in this chapter. The determination by the governing body shall not be made until such body finds that there is a shortage of decent, safe, and sanitary housing in the city; that such undeveloped vacant land will be developed for predominantly residential uses; and that the provision of decent, safe, and sanitary housing on such undeveloped vacant land is necessary to the relocation of families to be displaced from blighted areas in the city which are under redevelopment.

(b) In the undertaking of redevelopment projects on a regional or unified metropolitan basis, which projects involve the acquisition and development of undeveloped vacant land in one city as an adjunct to the redevelopment of blighted areas in another city, each determination or finding required in this Code section shall be made by the governing body of the city with respect to which the determination or finding relates. (Ga. L. 1951, p. 683, § 7.)

**JUDICIAL DECISIONS**

**Cited** in *Howard v. Housing Auth.*, 220 Ga. 640, 140 S.E.2d 880 (1965).

**8-4-9. Cooperation by state public bodies in aid of redevelopment projects.**

Any state public body, as defined in Code Section 8-3-152, shall have the same rights and powers to cooperate with and assist housing authorities with respect to redevelopment projects that such state public body has pursuant to Article 2 of Chapter 3 of this title, the "Housing Cooperation Law," for the purpose of assisting the development or administration of slum clearance and housing projects, in the same manner as though Article 2 of Chapter 3 of this title were applicable to redevelopment projects undertaken under this chapter. (Ga. L. 1946, p. 157, § 6.)

**8-4-10. Financial aid from federal government; security for aid.**

An authority may borrow money or accept contributions from the federal government to assist in its undertakings and redevelopment projects. An authority may do any and all things necessary or desirable to secure such financial aid (including obligating itself, in any contract with the federal government for financial assistance, to convey to the federal government the project to which said contract relates upon the occurrence of a substantial default thereunder), in the same manner as though it were securing such aid in connection with slum clearance and housing projects under Article 1 of Chapter 3 of this title, the "Housing Authorities Law." (Ga. L. 1946, p. 157, § 9; Ga. L. 1951, p. 683, § 4.)

**Cross references.** — Programs for relocation of persons and businesses displaced by federal-aid public works projects, Ch. 4, T. 22.

**RESEARCH REFERENCES**

**Am. Jur. 2d.** — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 17.

**8-4-11. Bonds and other obligations as legal investments and security.**

Bonds or other obligations issued by a housing authority in connection with a redevelopment project pursuant to this chapter, which bonds or obligations are secured by a contract with the federal government for financial assistance, shall be security for public deposits and legal investments to the same extent and for the same persons, institutions, associations, corporations, and other bodies and officers as bonds or other obligations which are secured by a contract with the federal government for annual contributions issued pursuant to Article 1 of Chapter 3 of this title, the "Housing Authorities Law," in connection with the development of slum clearance or housing projects. (Ga. L. 1946, p. 157, § 10; Ga. L. 1951, p. 683, § 5.)



**8-4-12. Investment in projects; acquisition, development, and sale of lands and improvements in project areas.**

Notwithstanding any restriction or limitation on investments contained in any other laws of this state, any building and loan association, any savings and loan association, any investment company, or any insurance company or association is authorized:

- (1) To invest its funds in projects contemplated by this chapter;
- (2) To acquire and hold land;
- (3) To acquire or erect apartment, tenement, or other dwelling houses, not including hotels but including accommodations for retail stores, shops, offices, and other community services reasonably incidental to such projects; to own, maintain, manage, and collect or receive income from such apartment, tenement, or other dwelling houses; and
- (4) To sell or convey such land and the improvements thereon. (Ga. L. 1946, p. 157, § 10; Ga. L. 1951, p. 683, § 6.)

## CHAPTER 5

## ART IN STATE BUILDINGS

Sec.		Sec.	
8-5-1.	Short title.		empt from bidding requirements.
8-5-2.	Legislative purpose.		
8-5-3.	Definitions.	8-5-7.	Ownership rights; rights of artists.
8-5-4.	Gifts and appropriations.		
8-5-5.	Duties of the art council.	8-5-8.	Annual report.
8-5-6.	Purchases and commissions ex-	8-5-9.	Sale of works of art by state.

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**Cross references.** — Georgia Art Policy Committee created, § 50-16-5.2.

**8-5-1. Short title.**

This chapter shall be known and may be cited as the “Art in State Buildings Program.” (Code 1981, § 8-5-1, enacted by Ga. L. 1987, p. 891, § 1.)

**8-5-2. Legislative purpose.**

The General Assembly finds and declares that the State of Georgia has a responsibility for expanding public experience with art. The General Assembly recognizes that other states have enacted legislation requiring the expenditure of 1 percent of funds allocated for the construction of state buildings for works of art for such buildings. (Code 1981, § 8-5-2, enacted by Ga. L. 1987, p. 891, § 1.)

**8-5-3. Definitions.**

As used in this chapter, the term:

- (1) “Acquisition” means acquisition by purchase, lease, or commission.
- (2) “Council” means the Georgia Council for the Arts.
- (3) “State buildings” means state office buildings, hospitals, prisons, buildings of state authorities, and such other state buildings which the Georgia Council for the Arts deems appropriate for the inclusion of art as provided in this chapter but shall not mean either the state capitol or the capitol education center.
- (4) “Work of art” means any work of visual art, including, but not limited to, a drawing, painting, mural, fresco, sculpture, mosaic, or photograph; a work of calligraphy; a work of graphic art, including an

etching, lithograph, offset print, silk screen, or a work of graphic art of like nature; crafts, including crafts in clay, textile, fiber, wood, metal, plastic, glass, or like materials; or mixed media, including a collage, assemblage, or any combination of the foregoing art media. The term “work of art” does not include environmental landscaping placed about a state building. (Code 1981, § 8-5-3, enacted by Ga. L. 1987, p. 891, § 1; Ga. L. 2000, p. 1332, § 1.)

**Cross references.** — Georgia Council for the Arts, § 50-12-20 et seq. Georgia Art Policy Committee, § 50-16-5.2.

#### **8-5-4. Gifts and appropriations.**

(a) Financing of works of art in state buildings shall be subject to appropriations by the General Assembly. The Governor shall include a budget item for art in state buildings in the budget of the Office of Planning and Budget in the annual budget submitted to the General Assembly.

(b) The council may accept grants, gifts, donations, bequests, or federal money made in connection with the art in state buildings program and expend such funds for the purposes of this chapter. (Code 1981, § 8-5-4, enacted by Ga. L. 1987, p. 891, § 1.)

#### **8-5-5. Duties of the art council.**

In order to carry out the purposes of this chapter, the council shall do all of the following:

(1)(A) Determine and implement procedures for the purchase or lease by written contract of existing works of art from an artist or the artist’s authorized agent. Works of art to be purchased or leased shall be selected by the council from lists of works prepared and submitted by advisory committees empowered by the council. In making such purchases or in executing such leases, preference may be given to artists who are Georgia residents. No lease obligation shall be incurred under the provisions of this chapter without the prior approval of the Office of Planning and Budget.

(B) Determine and implement procedures, one of which shall provide for competition among artists, for the selection and commissioning of artists by written contract to create works of art. Commissioned artists shall be selected by the council from lists of qualified and available artists prepared and submitted by advisory committees empowered by the council. In making such contracts, preference may be given to artists who are Georgia residents.

(C) If competition among artists is the procedure for selection of an artist pursuant to subparagraph (B) of this paragraph, a panel of three



judges shall be appointed to make such selection. The panel shall consist of the director of the Office of Planning and Budget or a person designated by such director, a member of the council or a person designated by the council, and one person selected by the other two who shall be a visual artist, an architect or designer, a person employed by an art museum, or a collector of visual art. At least one judge on each panel shall be a working visual artist;

(2) Consult with each artist commissioned regarding the design and placement of a work of art;

(3) Ensure that works of art acquired pursuant to this chapter are placed in a manner so that they are within public view;

(4) Ensure that the program for acquisition of works of art pursuant to this chapter results in participation by many different artists and in acquisitions from among many of the different art forms referred to in paragraph (4) of Code Section 8-5-3. A person who is, or is related to, a member of the council or is employed by the council or a person related to or employed in the office of the director of the Office of Planning and Budget may not be selected or commissioned pursuant to this chapter;

(5) Cooperate with other affected state agencies and consult with the artist to ensure that each work of art acquired pursuant to this chapter is properly maintained and is not artistically altered in any manner without the consent of the artist;

(6) Promulgate rules and regulations, as necessary, in consultation with the council and any other person, group, or association in the State of Georgia related to architecture, design, or the arts so as to facilitate the implementation of the council's responsibilities under this chapter; and

(7) Authorize payments to artists for works of art acquired pursuant to this chapter. (Code 1981, § 8-5-5, enacted by Ga. L. 1987, p. 891, § 1.)

**Cross references.** — Powers and duties generally of Georgia Council for the Arts, § 50-12-23.

#### **8-5-6. Purchases and commissions exempt from bidding requirements.**

Except as otherwise provided in this chapter, the selection and commissioning of artists and the purchase and execution of works of art for state buildings shall be exempt from the provisions of law relating to bidding requirements in connection with state buildings. (Code 1981, § 8-5-6, enacted by Ga. L. 1987, p. 891, § 1.)

**8-5-7. Ownership rights; rights of artists.**

(a) The state shall receive sole ownership of each work of art acquired pursuant to this chapter, including all tangible rights and privileges thereof, subject to the following intangible rights retained by the artist:

(1) The right to claim authorship of the work of art;

(2) The right to reproduce such work of art, including all rights to which the work of art may be subject under copyright laws. Such rights may be limited by written contract; and

(3) If provided by written contract, the right to receive a specified percentage of the proceeds if the work of art is subsequently sold by the state to a third party other than as part of the sale of the building in which the work of art is located.

(b) The rights granted to the artist by subsection (a) of this Code section may by written contract be extended to such artist's heirs, assigns, or personal representatives until after the end of the twentieth year following the death of such artist.

(c) Prior to execution of a written contract, the artist shall be informed in writing of the rights specified in subsections (a) and (b) of this Code section which may be granted by contract to the artist or to the artist's heirs, assigns, or personal representatives. (Code 1981, § 8-5-7, enacted by Ga. L. 1987, p. 891, § 1.)

**8-5-8. Annual report.**

In consultation with the director of the Office of Planning and Budget, the council shall prepare and distribute to the General Assembly an annual report relative to the art in state buildings program pursuant to this chapter. Such report may be submitted as part of a report on the activities and programs of the council. (Code 1981, § 8-5-8, enacted by Ga. L. 1987, p. 891, § 1.)

**Cross references.** — Annual report of Georgia Council for the Arts, § 50-12-24.

**8-5-9. Sale of works of art by state.**

If a work of art acquired pursuant to this chapter is to be sold by the state, such sale shall be made to the highest bidder, conditioned on the work of art first being offered to the artist at the bid price. (Code 1981, § 8-5-9, enacted by Ga. L. 1987, p. 891, § 1.)

## CHAPTER 6

CONSTRUCTION ACTIVITY PROHIBITION ON ABANDONED  
LANDFILLS

Sec.		Sec.	
8-6-1.	Short title.	8-6-4.	Permit required for construction of building or enclosed structure; exception.
8-6-2.	Definitions.		
8-6-3.	Division landfill records; filing notice of existence of landfill.		

**8-6-1. Short title.**

This chapter shall be known and may be cited as the "Construction Activity Prohibition on Abandoned Landfills Act of 1988." (Code 1981, § 8-6-1, enacted by Ga. L. 1988, p. 821, § 1.)

**Cross references.** — Requirements for deeds conveying interest in real property used as commercial landfill, § 44-5-48.

Code Section 28-9-5, in 1988, "This chapter" was substituted for "This Act" at the beginning of the Code section.

**Code Commission notes.** — Pursuant to

**8-6-2. Definitions.**

As used in this chapter, the term:

(1) "Construction activity" means to erect or build an enclosed building or structure of any type, kind, or design.

(2) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(3) "Landfill" means any location operated as a commercial venture for profit or operated by a county or municipality for the disposal of solid wastes or any location where a private owner accepts solid wastes for compensation from sources other than his own property for disposal.

(4) "Solid waste" means putrescible and nonputrescible wastes, except water carried body waste, and shall include garbage, rubbish (paper, cartons, boxes, wood, tree branches, yard trimmings, furniture and appliances, metal, tin cans, glass, crockery, or dunnage), ashes, street refuse, dead animals, sewage sludges, animal manures, industrial wastes (waste materials generated in industrial operations), residue from incineration, food processing wastes, demolition wastes, abandoned automobiles, dredging wastes, construction wastes, and any other waste material in a solid or semisolid state not otherwise defined in this article. (Code 1981, § 8-6-2, enacted by Ga. L. 1988, p. 821, § 1.)



**8-6-3. Division landfill records; filing notice of existence of landfill.**

(a) The division shall maintain records on each landfill operated now or in the future in this state, which records shall include an accurate legal description of the boundaries of the landfill and the dates of its operation.

(b) The division shall file notice of the existence of the landfill with the clerk of the superior court of the county or counties within which the landfill is located. (Code 1981, § 8-6-3, enacted by Ga. L. 1988, p. 821, § 1.)

**8-6-4. Permit required for construction of building or enclosed structure; exception.**

(a) No person shall construct any building or enclosed structure of any type, kind, or design on any real property on which a landfill on the public records has been located without first obtaining a permit for such construction from the local governing authority.

(b) This Code section shall not apply to construction activity by public service corporations or to the construction of roads, highways, or bridges. (Code 1981, § 8-6-4, enacted by Ga. L. 1988, p. 821, § 1.)

## CHAPTER 7

## PESTICIDES IN PUBLIC BUILDINGS

Sec.

8-7-1. Use or application of pesticides in public buildings; notice; material safety data sheets; penalty.

**8-7-1. Use or application of pesticides in public buildings; notice; material safety data sheets; penalty.**

(a) As used in this Code section, the term:

(1) "Agency" means the State of Georgia and any branch, department, agency, division, board, bureau, entity, official, employee, or agent of the state and any county, municipality, school district, consolidated government, or authority created by or pursuant to the Constitution of the State of Georgia or any general or local law of this state and any official, employee, or agent of any such entity.

(2) "Building operator" means the owner, the owner's agent, or the building manager of any public building or, in the case of a public building which is leased to a tenant who is responsible for the operation of the building, the tenant or the tenant's building manager.

(3) "Fumigant" means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes, or vapors, which gas or gases, fumes, or vapors when liberated and used will destroy vermin, rodents, insects, and other pests, but are usually lethal, poisonous, noxious, or dangerous to human life.

(4) "Insecticides" means substances, not fumigants, under whatever name known, used for the destruction or control of insects and similar pests.

(5) "Pesticide" means attractants, fumigants, fungicides, insecticides, rodenticides, and repellants.

(6) "Public building" means a building owned or leased by an agency, which is open to the public, including but not limited to the following:

(A) Any building which provides facilities or shelter for public use or assembly or which is used for educational, office, or institutional purposes; and

(B) Any library, museum, school, hospital, auditorium, dormitory, or university building.

(7) "Repellants" means substances, not fumigants, under whatever name known, which may be toxic to insects and related pests, but

generally employed because of their capacity for preventing the entrance or attack of pests.

(8) "Rodenticides" means substances, not fumigants, under whatever name known, whether poisonous or otherwise, used for the destruction or control of rodents.

(b) The building operator of any public building who personally applies or uses or who contracts for or orders the application within the interior of any public building of any pesticide requiring the direct supervision of a certified operator as defined in Code Section 43-45-2 or any pesticide which is sold solely for commercial applicator use and is restricted to uses other than household use shall post a conspicuous notice in such public building to notify anyone entering such building that a pesticide is being applied. If such pesticide or pesticides are applied on a regular basis or according to a schedule, such notice may be permanently displayed and shall include the days or dates on which such pesticide or pesticides are usually applied. If the pesticide or pesticides are not applied on a regular basis or according to a schedule or if the pesticides are applied on a day or date other than the day or date contained on a permanently displayed notice, such notice shall be posted before the application of any pesticide and shall remain posted for 24 hours following the application. Such notice shall include a notice of the location and hours during which any person may obtain information concerning the pesticides applied or to be applied and inspect and copy the material safety data sheet. Any such notice shall also include one or more telephone numbers for the building operator at which emergency information concerning the pesticides applied may be obtained at any time during the day or night and on any day of the year. It shall be the duty of the building operator to make available, upon request and within a reasonable period of time of said request, the name of any pesticide used and a copy of the appropriate material safety data sheet. If the pesticide is to be applied by a commercial applicator, a certified operator as defined in Code Section 43-45-2, or a pesticide contractor, it shall be the duty of such applicator or contractor to provide material safety data sheets to the building operator at the time the contract for service is entered or renewed. If any additional pesticides are used after the contract for service is entered, the additional material safety data sheets shall be provided to the building operator. A building operator shall retain for five years all material safety data sheets and other documents furnished pursuant to the preceding sentence. A building operator shall retain statements of information for two years as required by the rules and regulations required by Chapter 45 of Title 43, known as the "Structural Pest Control Act."

(c) Any person violating this Code section shall be guilty of a misdemeanor, provided that the penalty for a first offense shall be a fine not to exceed \$100.00. (Code 1981, § 8-7-1, enacted by Ga. L. 1996, p. 679, § 1.)





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